87-1153

Supreme Court, U.S.
FILED
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CLERK

No.

In the

Supreme Court of the United States

OCTOBER TERM, 1987

ROSEE TORRES d/b/a LEGAL SECRETARIAL SERVICES, LTD., TELEPHONE SECRETARIES UNLTD., DOCTORS HELPER & ATTORNEYS HELPER,

Petitioner,

v.

ILLINOIS BELL TELEPHONE COMPANY, an Illinois Corporation, AMERICAN TELEPHONE & TELEGRAPH INFORMATION SYSTEMS a/k/a AMERICAN TELEPHONE & TELEGRAPH CO., INC., a/k/a AT&T, A New York Corporation, and AT&T INFORMATION SYSTEMS, INC., a/k/a AT&T-IS, INC., a/k/a AT&T-IS, a Delaware Corporation,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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8788

QUESTIONS PRESENTED FOR REVIEW

1. WHETHER FILING A NOTICE OF APPEAL DIVESTS THE DISTRICT COURT OF JURISDICTION OVER ALL ASPECTS OF CASE INVOLVED IN APPEAL?

2. WHETHER A DENIAL OF RULE 60 MOTION IS FINAL AND APPEALABLE?

3. WHETHER SECTION 1291 COLLATERAL ORDER DOCTRINE & FINALITY DOCTRINE ARE FINAL AND APPEALABLE?

4. WHETHER DISMISSAL WITH PREJUDICE OF LESS THAN ALL CLAIMS ACTS AS FINAL ADJUDICATION ON MERITS WHEN APPLYING RES JUDICATA OR COLLATERAL ESTOPPELTO REMAINDER OR ENTIRE CLAIM?

5. WHETHER RULE 15 SUPPLEMENTAL PLEADINGS IN CONJUNCTION WITH RULE 8 PLEADINGS IS SUFFICIENT TO WITHSTAND MOTION TO DISMISS?

6. WHETHER FAILURE TO APPLY DISTRICT COURT ORDER WILL CAUSE A SUBSTANTIALLY DIFFERENT RESULT TO LITIGATION UNDER SUBSTANTIVE DUE PROCESS CLAUSE?

7. WHETHER DISTRICT COURT CAN REGARD TWO EPARATE CORPORATE ENTITIES AS ONE PARTY FOR URPOSES OF THIS LITIGATION?

8. WHETHER SECTION 1292 ATTORNEYS FEES ANCTIONS RULE IS APPLICABLE TO FEES ORDERED AID TO NON-ATTORNEY RESPONDENT WHO IS NOT UBJECT OF PETITIONER'S MOTION FOR DEFAULT, UALIFIES AS "NON-APPEALABLE ATTORNEYS EES"?

9. WHETHER PAYMENTS MADE OVER A PERIOD OF EARS UNDER INVOICED PURCHASE PLAN ON ONTRACT(S) FOR TELEPHONE EQUIPMENT QUALIFY S SALES OF COMMODITIES UNDER OBINSON-PATMAN ACT?

10. WHETHER THOUSANDS OF INVIVIDUAL AILINGS & TELEPHONE CALLS OVER A PERIOD OF EARS BY 3 SEPARATE ENTITIES, INDIVIDUALLY & HROUGH AGENTS FOR SAME PRODUCT(S), IS IN IOLATION OF FEDERAL & STATE AGENCY EGULATIONS & TARIFFS, SATISFY THE PATTERN EQUIREMENT OF RICO?

11. WHETHER CONTRACT ASSIGNMENTS FOR DEREGULATED EQUIPMENT UNDER JUSTICE DEPARTMENT & FCC DIVESTITURE JUDGMENT AUTHORIZES TRANSFER OF NEW CONTRACTS OF NEW EQUIPMENT TO REPRESENT EXPIRED CONTRACTS OF EXISTING,USED ON-PREMISE EQUIPMENT?

12. WHETHER COLLUSIVE AGENCY RELATIONSHIP AMONG PARTIES TO ESCAPE FEDERAL JURISDICTION IS SUFFICIENT TO DEFEAT A CAUSE OF ACTION IN FEDERAL COURT?

13. WHETHER FAILURE OF DEFENDANT TO ANSWER OR OTHERWISE PLEAD FOR 1 YEAR 3 MONTHS AFTER SERVICE, NOT REMEDIED BY RULE 60 DEFENSE, QUALIFIES AS A DEFAULT?

14. WHETHER COURT'S FAILURE TO ENFORCE A RIGHT OR GRANT FULL HEARING ON MOTION WHICH DEPRIVES ONE OF LEGAL/CONSTITUTIONAL REMEDIES IS A VIOLATION OF PROCEDURAL DUE PROCESS?

15. WHETHER FEDERAL JURISDICTION IS AVAILABLE WITHOUT DIVERSITY OF CITIZENSHIP IN FEDERAL QUESTION CLAIMS?

16. WHETHER INTENTIONAL REFUSAL OR FAILURE O USE STATE CORPORATE IDENTITY TO CONCEAL ON-REGISTRATION WITH STATE REQUIRED UNDER USINESS CORPORATION ACT OF ILLINOIS (1983) S SUFFICIENT TO CONSTITUTE FRAUD UNDER ICO?

17. WHETHER ATTORNEYS REPRESENTING EFENDANT'S STATUS IN COURT WITHOUT FILING PPEARANCE OR ANSWER, & REPLACING DEFENDANT ITH UN-NAMED PARTIES, CONSTITUTES ISCONDUCT, NEGLIGENCE,LACK OF DILIGENCE, ARELESSNESS & MALPRACTICE?

18. WHETHER FAILURE TO PLEAD WITH ARTICULARITY ANY OF THE ELEMENTS OF RICO THER THAN PREDICATE ACTS INVOLVING FRAUD ILL CAUSE COMPLAINT TO FAIL?

19. WHETHER INDIVIDUALLY EXECUTED ONTRACTS (6) FOR A SERIES OF PRODUCTS & ERVICES, TANGIBLE & INTANGIBLE BUT REGARDED S ONE, SATISFIES THE TYING CLAUSE OF THE HERMAN ACT?

20. WHETHER PERSONALIZED AS OPPOSED TO MECHANICALIZED TELEPHONE ANSWERING EQUIPMENT & SERVICES MEET STANDARD OF COMPETITION REQUIRED BY LANHAN ACT?

21. WHETHER PETITIONER'S WRITTEN AGREEMENT TO WITHHOLD LITIGATION 2 YEARS AT RESPONDENTS' REQUESTS DURING THEIR PENDING DIVESTITURE LITIGATION & THEIR NEED FOR TIME TO INVESTIGATE DEFEAT RESPONDENTS' DEFENSE OF STATUTE OF LIMITATIONS?

22. WHETHER 5-YEAR WRITTEN CONTRACTS MAY BE ORALLY RENEWED AND IMPOSED WITHOUT CONSENT OF ONE OF PARTIES, TO TEN YEAR ORAL CONTRACTS, ARE VALID?

23. WHETHER DISMISSAL UNDER FRCP 12(b)(6) IS FINAL JUDGMENT IF PLAINTIFF CHOOSES TO STAND ON VALIDITY OF COMPLAINT RATHER THAN REPLEAD?

24. WHETHER SEVENTH CIRCUIT CAN REFUSE TO DOCKET OR HEAR TIMELY APPEAL BRIEF?

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Federal Communications Commission

In the Matter of Procedures for Implementing the Detariffing of Customer Premises Equipment & Enhanced Services (Second Computer Inquiry), CC Docket No. 81-893, FCC 85-220; 35676, File ENF 83-18, Adopted April 26, 1985;Re- NR-109, leased May 15, 1985. . . . . NR-162-168

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RECORD DESIGNATIONS

A	Appendix
ex,	Exhibit
b-date	Entry on 7th Circuit Docket Sheet
NR-	**Entry** on District Court docket Sheets
TR-	Transcript by Court Reporter

No.

In the

Supreme Court of the United States

OCTOBER TERM, 1987

ROSEE TORRES d/b/a LEGAL SECRETARIAL SERVICES, LTD., TELEPHONE SECRETARIES UNLTD., DOCTORS HELPER & ATTORNEYS HELPER,

Petitioner,

v.

ILLINOIS BELL TELEPHONE COMPANY, an Illinois Corporation, AMERICAN TELEPHONE & TELEGRAPH INFORMATION SYSTEMS a/k/a AMERICAN TELEPHONE & TELEGRAPH CO., INC., a/k/a AT&T, A New York Corporation, and AT&T INFORMATION SYSTEMS, INC., a/k/a AT&T-IS, INC., a/k/a AT&T-IS, a Delaware Corporation,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner, ROSEE TORRES, individually and d/b/a LEGAL SECRETARIAL SERVICES, LTD., TELEPHONE SECRETARIES UNLTD., DOCTORS HELPER and ATTORNEY HELPER, respectfully prays that a Writ of Certiorari issue in the United

States Supreme Court, to review (a) all Federal jurisdiction and question claims dismissed with prejudice; (b) all combination Federal and State claims dismissed without prejudice for lack of federal jurisdiction; (c) inconsistent and conflicting decisions by U.S. District Court, Northern District, Eastern Division, with decisions and opinions of this and other Districts as well as U.S. Supreme Court; (d)inconsistent and conflicting decisions by U.S. Court of Appeals for Seventh Circuit with decisions and opinions of Seventh Circuit and other Circuits as well as U.S. Supreme Court; (e) departures by both the District Court and Seventh Circuit from usual and accepted course of judicial proceedings under Supreme Court Rule 17.1(a); (f) need for supervisory authority regarding claims arising from Federal agency regulations and violations, civil rights and RICO; (g) irregularities and misconduct of attorneys' representation of clients before Court without properly

being before the Courts and misrepresenting true names and identities of their corporate clients to the Courts to effectively deprive Petiton of right to a fair hearing and ultimately jury trial.

Petitioner prays that this Court honor this Petition as a Writ of Certiorari or Direct Appeal .

JURISDICTION

This is an appeal from an August 24, 1987 dismissal from the U.S. Court of Appeals for the Seventh Circuit for "lack of subject matter jurisdiction." Petitioner's Appeal Brief filed with the Seventh Circuit included the following District Court dismissals:

(a) Appeal from 28 U.S.C., Sec. 1292 Interlocutory Appeal of award of sanctions and fees to non-party subject of Petitioner's Motion, denied by Seventh Circuit July 24, 1987.

(b) Appeal from 28 U.S.C., Sec. 1291 Collateral Order (TR. July 22, 1987, pp.

7-10) regarding District Court Orders of July 8, 1987 (A-1) and July 15, 1987 (A-1(a)) dismissed by Seventh Circuit August 24, 1987.

(c) Appeal from July 31, 1987 dismissal with prejudice by District Court of all Federal anti-trust and RICO claims (A- 5 & A- 6), dismissed by Seventh Circuit August 24, 1987.

(d) Appeal from July 31, 1987 dismissal without prejudice by District Court of all combination Federal and State claims (A- 5 & A- 6), dismissed by Seventh Circuit August 24, 1987.

(e) Appeal from District Court's denial of Rule 60 hearing.

(f) Appeal from July 31, 1987 dismissals with and without prejudice of Respondent ILLINOIS BELL TELEPHONE CO., an Illinois Corporation, for lack of diversity.

Federal constitutional and statutory provisions invoked in the above, in addition to 28 U.S.C.,Sec. 1291 and 1292, are:

18 U.S.C., Sec. 1951(a); 18 U.S.C., Sec. 892 & 894; 18 U.S.C., Sec. 1951(bX1); 18 U.S.C., 891(6); 18 U.S.C., Sec. 1341; 18 U.S.C. 1962(a-c); 18 U.S.C., 1965(a); 28 U.S.C., 1332(a); 28 U.S.C., 1337; 28 U.S.C., 1359;28 U.S.C. 1391(b); U.S. Constitution, Article III, Sec. 1 & 2; Fourteenth Amendment: Equal Protection, Procedural Due Process and Substantive Due Process Clauses; Expediting Act of 1903, as amended, Act of March 2, 1907, Ch. 2564, 34 Stat. 1246 ; 18 U.S.C., Sec.3731 granting direct review of those decisions involving federal anti trust, interstatecommerce and communications statutes; 42 U.S.C., 1981.

Federal Agency Regulations

Federal agency orders, judgments and regulations allegedly violated requiring Federal jurisdiction include Federal Communications Commission ("FCC") and United States Justice Department divestiture orders, as follows:

(a) CPE Detariffing Order, 95 FCC 2d 1276 (1983)

b. Final Decision of Second Computer Inquiry, 77 FCC 2d 50 (1980), further modified on Reconsideration, 88 FCC 2d 512 (1981, hereinafter, Further Reconsideration Order, aff'd sub. nom. Computer and Communications Industry Association v. FCC, 6943 F.2d 198 (D.C. Cir. 1982) cert. denied, 461 U.S.938 (1983).

c. Second Computer Inquiry, Memorandum Opinion and Order on Reconsideration; 50 Fed. Reg. 9016 (1985).

d. U.S. v. AT&T, 552 F.Supp. 131 (D.D.C. 1982)aff'd sub. nom. Maryland v. United States, 460 U.S. 1001 (1983) and its Modification of Final Judgment ("MFJ").

e. U.S. v. Western Electric Co., 569 F. Supp. 990 (D.D.C.) aff'd sub. nom. California v. United States, 104 S. Ct. 542 (1983) as to AT&T Plan of Reorganization, approved by District Court of Columbia.

(NOTE: AT&T-IS, INC., (Delaware) not part of above, formed in 1982 (EX.2), assigned equipment in 1984 (NR-109,127:Bill of Conveyance).

Supreme Court Jurisdiction

Petitioner invokesjurisdiction to file this Petition for Writ of Certiorari under 28 U.S.C., Sec. 2101(c) or, in alternative, as a direct appeal under Expediting Act, 18 U.S.C., Sec. 3731.

OPINIONS BELOW

1. District Court Order of July 8, 1987 (A-1): Petitioner's Motion for Default against original respondent AMERICAN TELEPHONE & TELEGRAPH INFORMATION SYSTEMS (no corporate identity), a/k/a AT&T (New York Corporation)(EX.1) DENIED. Petitioner ordered topay$300 sanctions to second Respondent (NR-100), AMERICAN TELEPHONE & TELEGRAPH INFORMATION SYSTEMS, INC. (with a corporate designation) a/k/a AT&T-IS, INC.(Delaware)(EX.2),not subject of Petitioner's Motion.(NR-104) Minute Order submitted to Court by Petitioner naming New York AT&T(EX.1) not utilized. (NR-162-168,Misc.Document A-1(a))

Petitioner files Notice of Appeal July 14, 1987.(NR-108).

2. Revised District Court Order of July 15, 1987 (no hearing): Respondent's name changed to AT&T-INFORMATION SYSTEMS,INC. (NR-100;EX.2)Not party to Motion. Petitioner

3. Petitioner files Appeal with Seventh Circuit, 28 U.S.C, 1292; No.87-8042 (NR-127) on July 16, 1987.

4. District Court denies certification under 28 U.S.C., 1292: grants appeal under 28 U.S.C., 1291 Collateral Order; "final unless reversed, stay pending appeal."(TR.July 22, 1987). (A-3)

5. Seventh Circuit Order: Appeal under 28 U.S.C., 1292 DENIED, July 24, 1987.(A-4)

6. District Court Order (A-5) and Memorandum Opinion(A-6) July 31, 1987: Counts 1-IV and XI dismissed without prejudice for lack of subject matter, under Rule 12(b)(1); Counts V-IX with prejudice for failure to state a claim under Rule12(b)(6), with leave to amend under 42 U.S.C., Sec. 1981 or 1982.

Petitioner files Notice of Appeal on August 3, 1987.(NR-139)

7. District Court Order of August 3, 1987, Docketed August 4, 1987 (NR-138): Petitioner to file Amended Complaint under 42 U.S.C., 1981 or 1982 before September 3, 1987 (A-7).

8. Petitioner files Appeal Brief on Cases 87-2125 and 87-2236 on August 24, 1987 with Seventh Circuit. Seventh Circuit refused to post on Docket Sheets or certify receipt) (A- 8) Filing fees paid to District Court, receipt no.22112 for 87-2125 for $105, and for 87-2236 for $105, receipt no. 23105 for 87-2236 based on Notice of Appeal NR-108 & 109)

9. Seventh Circuit Order of August 24, 1987: Appeals 87-8042, 87-2125 & 87-2236 dismissed in entirety for lack of subject matter jurisdiction. (A-9) Petitioner files Notice of Appeal August 26, 1987.

10. District Court Order of September 25, 1987 dismisses Count X with prejudice for purposes of Appeal. Supplemental and Amended Notice of Appeal filed. (NR-159)(A-8)

STATEMENT OF THE CASE

Petitioner, ROSEE TORRES, is the owner of telephone answering services specializing in the legal and medical profession in Chicago, Illinois, doing business as: LEGAL SECRETARIAL SERVICES, LTD., TELEPHONE SECRETARIES UNLTD., DOCTORS HELPER and ATTORNEYS HELPER. Each of the four entities represent one 100-line 557-B switchboard ("Board"). Each of the above entities and Boards represent 5-year written contracts between Petitioner and ILLINOIS BELL TELEPHONE COMPANY (then a part of AMERICAN TELEPHONE & TELEGRAPH CO. (EX.1, prior to court-ordered divestiture by the U. S. Justice Department and Federal Communications Commission ("FCC") to be discussed later).

Petitioner and BELL executed contract for LEGAL SECRETARIAL SERVICES in 1970; Board delivered and installed in 1971. Parties executed contract for TELEPHONE SECRETARIES in 1975; Board delivered and installed in 1975-76. Parties executed one contract for

both DOCTORS HELPER and ATTORNEYS HELPER in September, 1980; both Boards were delivered in February 1981, but Respondent BELL completed partial installations of 50 of 100 lines in 1984 on DOCTORS HELPER Board, with the remaining 50 lines on that Board and none of the 100 lines of the Attorney's Helper Board completed as to installation because of BELL's cancellation of the manufacture of the Boards in December 1980 resulting in shortage or non-availability of parts. Advise No. 4244 effective December 8, 1981 filed by BELL with Illinois Commerce Commission regarding the above cancellation and termination clause of 5-year contracts. (NR-68, Ex.;69) All 150 lines remained non-functionable and inoperative until April 28, 1987 when theDistrict Court impounded the Boards. (NR-62;91)

In addition to the above, Petitioner and BELL executed the following contracts: (a) one contract for four new Boards on August 25, 1980 and two new Boards on October 15, 1987 for a total of six.(NR-68,69) These six

Boards were never delivered or installed. (b) Two contracts consolidated into one for two sets of Direct Inward Dialing ("DID) telephone numbers at Illinois Commerce Commission rates of $22.00 per month per set of 10, for a 5-year period, which Bell reclassified to standard telephone numbers at $220 per month within 2 months of installation in 1984 because of difficulty in obtaining AT&T equipment after divestiture. Petitioner has been and is presently tendering these re-classified rate increases to BELL in order that BELL does not terminate Petitioner's and clients' other lines as it has done several times in the past when Petitioner refused to accept the newly imposed contract.

Divestiture and Credit Toward Purchases: As a result of court-ordered divestiture, and pending final judgment and orders in the following litigation involving Respondents BELL and AMERICAN TELEPHONE & TELEGRAPH CO. ("AT&T) EX. 1, Petitioner executed agreements to withhold litigation

for a 2 year period. (NR=68, Ex. 5(a) & 5(b). In consideration thereof, BELL, individually and as agent for the newly-formed 1982 entity, AT&T INFORMATION SYSTEMS, INC. of Delaware (EX.2) (AT&T-IS) agreed to credit disputed overpayments toward the purchase of new-updated equipment to replace capacity of all ten Boards, providing Petitioner with up-dated material on equipment, which entailed $70,000 in credits toward purchase as of April 1984 (NR-162-168) based on information supplied Petitioner by BELL, AT&T and AT&T-IS. (NR-68, NR-69;NR-109;NR-130;NR-162-168, No.14 items a-e). Finality of contract was to be completed pending equipment transfer by AT&T to BELL and BELL to AT&T-IS, the Court and FCC approval: U.S. v. Western Electric Co., 569 F. Supp. 990, 993 n.9 (D.D.C.); U.S.v American Telephone & Telegraph Co. 552 F.Supp.131 (D.D.C.1982, aff'd sub. nom. Maryland v. U.S., 460 U.S. 1001 (1983); and ALL the Justice Department and FCC regulations enumerated on pages 5 and 6 of

"Jurisdiction", which reaffirmed the Modification Final Judgment entered in 1983.

As further consideration for Petitioner withholding litigation which would be the subject of the 150 non-functioning lines, non-delivery of six new switchboards, and unareasonably slow status or delivery of new comparable equipment, all Respondents provided Petitioner with assurances of credits by granting Petitioner right to withhold additional payments during investigation and dispute (EX.68,"Illinois Bell Credit and Billing Policies" and AT&T/AT&T-IS Credit and Payment Policy now in Protective Custody.(NR-27,28).

To avoid the above agreements, BELL, individually and as agent for AT&T-IS (1984-86) and AT&T-IS, individually and as agent for AT&T (1986 to October 1987) informed Petitioner that the two year statute barred Petitioner from litigating and all monies paid would not be refunded or applied; Petitioner wasthen billed monthly by AT&T for each of the four on-premise

Boards for lease rentals of approximately $277 per Board and AT&T-IS commenced billing Petitioner the same amount for each Board as a continuation of the Flexible Purchase Plan of 1984, resulting in Petitioner purchasing and leasing the same equipment for the same period, with payment on one not applicable other, and complete disruption of service on several occasions when Petitioner objected to the new arrangement. As one method of forcing compliance, 50 of Petitioner's clients -- doctors and attorneys' lines -- were disrupted in August 1986. Petitioner did not prevail in her injunction. (NR-31-37) Respondents' new arrangement also interpreted the divestiture as granting them rights to change the 5 year written contracts to 10 year oral contracts extending to 1990-91; transfering the 1980 contracts for six (6) switchboards to represent the 1970 contracts for four switchboards (NR-9,NR-20, NR-81-84). All the above are contested by Petitioner.

Installation and Maintenance Agreements. A dispute between the parties involve the terms "installation" and "maintenance", used inter-changeably by the Respondents. BELL Installation Department maintained the problem of the 150 inoperable and non-functioning lines was a repair and mentenance problem because of the cancellation of equipment and parts, and the new parts needed to be redesigned, restructured, repaired, refurburished and/or replaced in order to be effective with Petitioner's equipment. They therefore removed various parts from all four Boards from 1980-1986 in an attempt to accomplish this, to no avail. Newly removed parts were never replaced, creating more problems. Repair Department of BELL regarded the matter as an installation problem,since that department originally ordered and installed the equipment. AT&T-IS' administration and vice president Porter in its letter to FCC maintained Petitioner had maintenance

agreement with it, and denied cancellation of equipment despite BELL's notification of Illinois Commerce Commission.(NR-68,Ex.4, pp.1-2 and NR-69). Attorneys representing Respondents AT&T-IS and AT&T maintained in writing that Petitioner was not entitled to maintenance or repairs. (NR-87,88,89, Ex.16A) This resulted in 150 lines or one and half boards remaining totally inoperative with numerous lines on the other two Boards completely non-functioning since they were used as parts by Respondents. The situation remained the same from 1980-1987 to impoundment on the on-premise Boards, despite Petitioner having been required to make monthly payments (and did make all payments)from 1980-1986 on working and non-working equipment in order that Respondents would not terminate entire business telephone service. Petitioner is alleging liability to all Respondents regardless of terms used by their internal departments.

Discrimination. Petitioner alleges dis criminatory pricing tactics and practices for their rates as to services and purchases, and that these rates were inconsistent with ICC and FCC guidelines prior to divestiture and equally disportionate after divestiture along racial and ethnic lines. One such comparison is the termination charge set by ICC on switchboards as $339 (NR-68, Ex.3), which termination is in excess of $8,000 per board for Petitioner and other minorities upon Respondents' discovery of racial and ethnic background. NR-162-168,Nos.14a-c) Another, FCC guidelines grant AT&T-IS right to sell on-premise equipment at established rates (NR-130, Nos. 1-4;NR-162-168), and Respondents have sold switchboard similar to Petitioner's then on-premise equipment for $1,000 to caucasian answering services as Ms. Andriotti(EX.7), whereby it has refused sales to Petitioner and other minorities, including the equipment Petitioner presently acquired through assistance of interested

caucasian parties approaching Respondents in order that Petitioner might remain in business. Third, Respondents, in placing their equipment on the public market, have cancelled the sale altogether when informed by caucasian inquirers and purchasers that the equipment was scheduled for Petitioner's answering services, as on one occasion when they cancelled Judy McIntyre's equipment and on another occasion the Chicago Temple Answering Service contract upon the same conditions. NR-87,88,89). Fourth, but not last, ICC rates for switchboards after 5 years on-premises drop to $45 per month and,on one month contract of $8,840 which Petitioner was required to pay for two of the Boards, would also drop to $45 per month on each. However, ever, from termination of each of the 5 year contracts of 1970's andtwo 5-year contracts of 1980 in which Petitioner was required to pay the one-month contract price (NR-68, Ex.3), BELL,AT&T and AT&T-IS refused reduced regulated rates or refunds.The same applied to other minority

businesses in Chicago with switchboard equipment, as that inadvertently directed to Petitioner during discovery (NR-109, 130, 162-168, Nos. 8(a-f) which included an "Embedded Products Pricing Information Sheet" (No.8) establishing rates while submitting other minoritiy subscriber accounts as that of Juanita Hall (8-c) indicating excessively increased charges inconsistent with rates.

Petitioner maintains that these are a few examples of disparitive rate practices by Respondents and that it maintains a "hit-list" of minority businesses and charitable organizations such as the 10,000 member Black church on Chicago's Southside, Johnnie Coleman Institute and Christ University Temples, in which switchboard equipment is used in conjunction with BELL lines and numbers, and that a portion of this hit-list (EX.7) discloses Petitioner's business and other minorities targeted for such excessive rates, made aware of by Respondents' counsels "Attorney-Client

Privileged Information" documents directed from one Respondent's attorney to another, portions of which were deposited with Court for purposes of this Appeal (NR-109,NR-162-168) This does not include the oral representation of minority businesses volunteered to Petitioner during divestiture transition reflecting Respondent's short-term goals repossessing Boards resulting from bleak, minority = business survival outlook, which would be provided public, and Petitioner in honor of six Boards parties contracted for but not available (NR-68,Ex.1,2) because of cancellations with manufacturer.

SUMMARY

The District Court has impounded the 4 Boards (NR-91) prior to trial without determining equitable rights thereof, contract - liability, accountability of monies paid Respondents ($70,000 or prior to 1984,$35,592 1984-present in overpayments). Only this Court's review at this point can assure fair and equitable remedies.

1. FILING A NOTICE OF APPEAL FROM FINAL JUDGMENT DIVESTS DISTRICT COURT OF JURISDICTION OVAL ALL ASPECTS OF CASE INVOLVED IN APPEAL.

Petitioner contends that her Motice of Appeal filed July 14, 1987 under 28 U.S.C., Sec. 1291 (NR-108) regarding the July 8, 1987 Order (A-1) and the July 15, 1987 Order (A-2) and a subsequent Notice of Appeal of August 3, 1987 (NR-139) regarding the July 31, 1987 Orders of dismissal with and without prejudice(NR-138) should have divested the District Court of further action except that which necessary to assist in the appeal. Griggs v. Provident Consumer Discount Co., 459 U.S. 56,58 (1982);CED'S INC. v. EPA, 745 F.2d 1092, 1095-96 (7th Cir. 1984), cert. den., 471 U.S. 1015 (1985).

If the entire appeal was interlocutory under 28 U.S.C., Sec. 1292, and such was not the case herein, the District Court would retain the power to proceed with matters not involved in the appeal or to dismiss the case as settled, thereby mooting the appeal.

Shevlin v. Schewe, 809 F.447, 450-51 (7th Cir. 1987). The District Court declared this Order final and appealable under Sec. 1291, granting Petitioner stay pending appeal (TR. July 22, 1987, pp. 7-10), and is therefore in error in proceeding with the case up to and through September 23, 1987 other than to effect this appeal.

It would also be impossible to proceed without piecemeal litigation resulting since ALL parties to this appeal are involved from July 8 and July 15 Orders, contrary to Court's contention in Footnote 1 of its Opinion that there was merely a "misnomer." BELL and AT&T were one prior to 1984 divestiture; BELL acted as agent for AT&T (EX.1) and AT&T-IS (EX.2) from 1984-1986 and AT&T-IS (EX.2) acted in its behalf and as agent for AT&T.

The Seventh Circuit did not address this issue. Illinois Courts agree with Petitioner as to treating such Order as final and appealable to eliminate piecework. Elg v. Whittington, 149 Ill.App.3d 307, 500 N.E.2d 568, 102 Ill. Dec. 675 (4th Dist. 1986).

2. THE DISTRICT COURT'S DENIAL OF RULE 60 RELIEF IS FINAL AND APPEALABLE.

The District Court's denial of Petitioner's Rule 60 request to correct the name of the party the Court deemed proper in its July 8 and July 15 Orders (A-1,A-2) to conform with that specified by Petitioner, i.e., a default against the originally named New York Respondent, AMERICAN TELEPHONE & TELEGRAPH INFORMATION SYSTEMS (without corporate designation) a/k/a AT&T, rather than the newly added Respondent (NR-100) AMERICN TELEPHONE & TELEGRAPH INFORMATOIN SYSTEMS, INC., a/k/a AT&T-INFORMATION SYSTEMS, INC., a/k/a AT&T-IS of Delaware is final and appealable under Rules 60(a) and 60(b) respectively. Henry v. Farmer City State Bank, 808 F.2d 1228, 1240 (7th Cir. 1986); Patzer v. Board of Regents of the University of Wisconsin, 763 F.2d 851, 859 (7th Cir. 1986). Therefore, Petitioner's Notice of Appeal from this final denial of relief should have stayed the District Court from taking further action in the case except to assist in the appeal, and it erred in

proceeding otherwise, such as proceeding to change the name and party as to sanctions in its July 15, 1987 Order (without hearing), denying Petitioner's request to file Affidavit in Support of Motion for Default (TR. July 8 and 22, 1987), and refusing to correct attorneys Sidley & Austin's representation of the status of the New York Respondent, AT&T, before the court prior to July 22, 1987 without the attorneys' formal appearance and answer for AT&T, which was subsequently filed without Court's permission after Notice of Appeal filed, dated July 22, 1987. (NR-117-121)

Unless the clerical errors are corrected, the Civil Docket Sheet will continue to reflect name and party errors as indicated on dockets posted for NR-10,21,27,44,48,49,52 54,55,72,84,90,92,96 and will have a profound effect as to which Respondent is effected in future litigation upon final judgment in this case, including any Default Order (A-1,A-2).Section 9 of this Petition will cover "name correction" more fully.

3. THE DISTRICT COURT DECISION OF COLLATERAL ORDER UNDER 28 U.S.C., SEC. 1291 IS FINAL AND APPEALABLE.

Again, Petitioner refers to the District Court's proceedings on July 22, 1987 (See Transcript) whereby it denied certification of Petitioner's appeal under Sec. 1292, but granted collateral appeal under Sec. 1291, granting Petitioner stay pending appeal and making the Order final. Again, Petitioner contends that the District Court is in error in proceeding with the entire case after such Order, more particularly in its August 3, 1987 Order directing Petitioner to file Amended complaint by September 3, 1987 (NR-138) pending this appeal. The Seventh Circuit has interpreted a Sec. 1291 order as final and appealable and further takes the position that any party who fails to appeal within 30 days of Order waives the right to be heard on the same issue from any appeal taken from the final decree. Victor Talking Machine v. George, 38 Mich. L. Rev. 548 (1940). Elg v. Whittington, supra.

Under Sec. 1291, the Seventh Circuit's general view is that one failing to take an immediate appeal on issues collateral to the merits of the action as Petitioner has done herein will waive rights to relitigate the remainder of the claim. Therefore, the Seventh Circuit as well as the District Court erred in acting inconsistent and contrary to established precedents. Cohen v. Beneficial Loan Corp., 337 U.S. 541, 546 (1949); Palmer v. City of Chicago, 806 F.2d 1316, 1318-20 (7th Circ. 1986); Exchange National Bank v.Daniels, 763 F.2d 289-94; 763 F.2d at 290 (7th Cir. 1986); Parks v. Pukovic, 753 F.2d 1397, 1401-02 (7th Cir.) cert. denied, 105 S. Ct. 3529 (1985); McMunn v. Hertz, 791 F.2d 88, 90 (7th Cir. 1986).

28 U.S.C., Sec. 1291 is applicable to District Court Orders of July 8 and July 15, 1987 (A-1,A-2) in bringing all other errors up for appeal so as not to have piecemeal in that the District Court amd Seventh Circuit erred in not treating the above Orders as appealable under Sec. 1292 in

conjunction with1291, despite the District Court's denial of certification under 1292. The Orders direct Petitioner to pay a Respondent not a party of or subject to the Motion for Default. Attorneys Sidley & Austin knowingly misrepresented Court in asserting that the defaulted New York Corporation,AT&T, was the same as the newly added Respondent, their client, AT&T-IS of Delaware.(TR.July 1,8,22) Attorneys fees sanctions should not be applicable to AT&T-IS, since they are not attorneys or subject of the motion (covered more in Section 9 herein). Therefore, District Court's Order should be reversed. Frazier v. Cast, 771 F.2d259 (7th Cir. 1987), Mulay Plastics, Inc. v. Grand Trunk Western RR Co., 742 F.2d 369 (7th Cir. 1984), cert.denied, 470 ;U.S. 1037 (1985).

Petitioner applies the 1291 Doctrine of Pragmatic Finality to this Appeal as exception to final judgment rule, to prevent piecemeal review of many issues fundamental to further conduct of case. Gillespie v. U.S.Steel Corp., 379 U.S.148,152-54 (1964).

4. A DISMISSAL WITH PREJUDICE ACTS AS A FINAL ADJUDICATION ON THE MERITS.

Rule 54(b) of the Federal Rules of Civil Procedure provides that the Court may direct the entry a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason to delay and upon an express direction for the entry of a judgment. This the did on July 22, 1987 when it declared its decision collateral and final, granting Petitioner stay pending appeal, and again when it ordered Counts V-VII & IX dismissed with prejudice (A-2,A-5 & A-6)

Although the above judgments or orders do not terminate the entire litigation, the U.S. Supreme Court regards the rule as consistent with the final judgment statute because such orders are in fact final as to particular parties or claims. Sears Roebuck & Co.v. Mackey, 351 U.S. 427, 435-437 (1956). Certification is not necessary here. Glidden v. Chromalloy American Corp. 808 F.2d 621,523 (7th Cir. 1986) Nor is

precise language required. Alexander v. Chicago Park District, 773 F.2d 850, 855 (7th Cir. 1985) cert. denied, 106 S. Ct. 1492 (1986).

In the instant cause, there are inseparable issues involved in some of the claims. Any orders in which the District Court decides part of the case, as it chose to do in one instance in its August 3, 1987 Order (NR-138) by requiring Petitioner to file an Amended Complaint under 42 U.S.C., Sec. 1981 or 1982, would be conclusive to the remainder of the case and act as res judicata with respect to those counts dismissed without prejudice. Petitioner would therefore be unable to relitigate those matters later, and would lose all rights if the future if this timely appeal is not taken on final orders resulting from the collateral order and dismissals with prejudice, since there are no orders or agreements to the contrary preserving these rights. Marrese v. American Academy of Orthopaedic Surgeons, 726 F.2d 1150 (7th

Cir. 1984); Bronstein v. Kalcheim, 26 Ill. App. 3d 643(1984). 10 C. Wright & A. Miller publication: Federal Practice and Procedure, Sec. 2661 (1976); 6 J.Moore, Federal Practice (54.42 2d Ed.1976).

The term "with prejudice" on some of the counts should be deemed mean a final dismissal of the entire claim, including other counts, not only in above Seventh Circuit decisions, but Illinois decisions, making an immediate appeal appropriate.Josephson's National Bar Review v.Nexus Corp. 359 F.Supp. 1144, 1146 (N.D.Ill.1973); People Ex.Rel. Scott v. Chicago Park District, 66 Ill. App.2d 65, 360 N.E.2d 773 (1976); Towns v. Yellow Cab, 73 ill.App. 3d 407 (1971); Morris v. union Oil Co. of Calif., 96 Ill. App. 3d 148, 421 N.E. 270 (1981); Bernhardt v. Fritzshall, 9 Ill. App.3d 1041, 293 N.E.2d 650 (1973); People v. Loevy, ill.App.3d 407 (1971); Elq v. Whittington, supra. U.S. v. Bananipour, 2 2d 697 F.2d 170,173 (7th Cir.1982),cert. den. 400 U.S. 1091 (1983).

5. RULE 15 SUPPLEMENTAL PLEADINGS IN CONJUNCTION WITH RULE 8 PLEADINGS IS SUFFICIENT TO WITHSTAND DISMISSAL UNDER RULE 12(b)(6).

The District Court's dismissal with prejudice of several counts of Petitioner's pleadings for the reason that "her allegations are to numerous in a notice-type pleading"is without merit and inconsistent with prior Seventh Circuit decisions, in that it has been established that allegations need not be set out in detail all the facts upon which a claim is based, but must merely allege sufficient facts to outline the cause of action. Doe v. St. joseph's Hospital, 788 F.2d 411 (7th Cir. 1986).In the same case, the Seventh Circuit ruled that allegations of a complaint as well as reasonable inferences to be drawn from them are taken as true, and the complaint need only state direct or inferential allegations concerning all of the material elements necessary for recovery under the relevant legal theory.Mescall v. Burrus, 603 F.2d 1266 (7th Cir. 1979).

Even more direct is the Seventh Circuit's ruling that such a dismissal is improper unless it appears beyond a reasonable doubt that plaintiff can prove no set of facts in support of her claim which would entitle her to relief. Papapetropoulos v. Milwaukee Transport Services, inc., 795 F.2d 591, 594 (7th Cir. 1986).

Petitioner contends that the dismissals are in error since her Complaint met with the Rule 8 standard which requires only a short statement notifying parties of claim. Car carriers, Inc. v. Ford Motor Co., 745 F. 2d 1101, 1107 (7th Cir. 1984); Slavenburg Corp. v. Boston Ins.. Co.,30 F.R.D. 123 (S.D.N.Y. 1962).

Rule 15 grants Petitioner the right to serve supplemental pledings setting forth transactions, occurrences, and events which transpired or came into her knowledge after filing the Complaint, such as that acquired in discovery, decision results which in litigation with the various Federal agencies (such as Respondents' on-going litigation

with FCC) pertaining to issues involved in this Claim, etc. Rule 12(e) allows parties to obtain additional information through discovery, or request formore definite statements. Respondents, in failing to avail themselves of these procedures, halted discovery altogether(NR-98), despite Petitioner's several attempts to seek sanctions against Respondents for failure to comply with discovery, to no avail. (NR-49, 51 & 98) to dismiss Petitioner's pleadings resulting from Respondents' failure or refusal to apply or comply with discovery procedures which would enable them to obtain additional information works contrary to reasonableness and justice.

Petitioner's case is a jury case. The District Court is not required to accept legal conclusions either alleged or inferred from pleaded facts. Carl Sandburg Village Condo Assn No. 1 v. 1st Condo Development Co., 758 F.2d 203, 207 (7th Cir. 1985) The District Court's dismissals were improper.

6, FEDERAL JURISDICTION IS AVAILABLE WITHOUT DIVERSITY OF CITIZENSHIP WHEN FEDERAL CLAIMS AT ISSUE OR COLLUSIVE AGENCY DESIGNED TO DEFEAT JURISDICTION.

The District Court is in error in ruling that Petitioner's cause of action should be dismissed because Respondent BELL and Petitioner are in the same jurisdiction, in that 28 U.S.C., Sec. 1391(b) allows Federal question claims arising out of Federal statutes to be brought in the District where either all the defendants reside or as in Petitioner's case, where the claim arose. Petitioner's claims meet the Federal statute question in its Federal anti-trust counts (V-VII),RICO count (IX), as we as under 42 Civil Rights count (X) under 42 U.S.C., Sec. 1981.

The final judgment resulting from the divestiture in U.S. v. AT&T, supra and the agency claims set forth in "Jurisdiction" section of this Appeal Brief also resulted in AT&T, AT&T-IS and BELL forming an agency relationship among themselves from 1982-1986 to effectuate transfers of equipment,

billing procedures,records and assignments across the nation, in a smooth and orderly transition, with each Respondent acting as agent for the other effectuate divestiture. 28 U.S.C., Sec. 1359 does not grant jurisdiction in civil actions when parties collusively invoke jurisdiction. Under same theory, collusive agency should not defeat jursidction.

Pendant Jurisdiction. The U.S. Supreme Court ruled that if plaintiff states a substantial federal claim along with other claims as herein, and is ordinarily expected to try them in one proceeding, the District Court has power to try ALL legal issues which can be fixed upon it, including claims against parties as to whom there exists no other independent basis for federal jurisdiction. United Mine Workers v. Gibbs, 383 U.S. 715,86 S. Ct. 1130, 16 L.Ed.2d 218 (1966); Moor v. County of Alameda, 411 U.S.693, 93 S.Ct. 1785, 36 L.Ed.2d 596 (1973); Montgomery v. City of Chgo, 670 F.Supp. 230 (N,D.Ill.1987)

7, PETITIONER'S FAILURE TO APPLY A DISTRICT COURT ORDER WILL CAUSE A SUBSTANTIALLY DIFFERENT RESULT TO THE LITIGATION AFFECTING SUBSTANTIVE DUE PROCESS.

Petitioner's failure to apiply the District Court order OF August 3, 1987 (NR-138) and file an Amended Complaint before September 3, 1987, and the District Court order of July 31, 1987 Memorandum Opinion that Petitioner proceed with state claims (Counts I-IV and XI) in State Court (A-6) while the dismissals with prejudice of Federal claims stand, will cause a substantially different result to the litigation. (a) Rule 60 relief as to correct parties will not have been resolved to determine the accuracy of the parties-Respondents; (b)Rules 54, 28 U.S.C., 1291 and dismissals with prejudice as final judgments will render the entire claim res judicata or collaterally estop Petitioner from relitigating any portion of the claim if an immediate appeal is waived; (c) Counts I-IV and XI involve a combination of State and Federal claims, and Petitioner has

already asserted her pendant jurisdiction rights to those involving State claims when she chose the Federal Court jurisdiction; a removal for a part of the claim in State Court while the same issues involving Federal violations in Federal Court would defeat Petitioner's purpose in every aspect of the litigation Applying the District Court order to proceed through a barrage of final judgments would cause Petitioner's entire complaint to fail, with a loss of all rights. Guaranty Trust Co. v. York, 326 U.S. 99, 65 S. Ct. 1464, 89 L.Ed. 2079 (1945); Campbell v.Holt, 115 U.S. 620, 6 S.Ct. 209, 29 L.Ed. 483 (1985); Terrace v.Thompson, 263 U.S. 197; 44 S.Ct. 15, 68 L.Ed. 255 (1923); Lynch v. U.S., 292 U.S. 571, 54 S. Ct. 840, 78 L.Ed. 1434 (1934).

Other rights which would be lost if Petitioner proceeded with the District Court's Order are (a) refund claim under FCC and ICC regulations; (b switchboards impounded (NR-91) without trial or determination of rights,

8. REFUSAL TO GRANT RIGHT TO HEARING, DEPRIVING ONE OF PROPERTY RESULT IN LOSS OF LEGAL REMEDIES & IS VIOLATION OF PROCEDURAL DUE PROCESS.

The 14th Amendment protects citizens of the U.S. from the government unjustly depriving any person of property without due process, or denying any person within its jurisdiction equal protection of the law. The District Court acted contrary to these constitutional guaranteesin the following situations: (a) It impounded switchboards without hearing as to equitable rights of parties (NR-91), without hearing on Petitioner's monies paid to Respondents on both purchase and lease agreements (NR-69), without acting or hearing on Petitioner's Motions for Sanctions with regard to discovery (NR97,98), and without hearing on Petitioner's Motion for Injunction or Restraining Order (NR-31). (b) The District Court impounded switchboards over Petitioner's objections to choice of partial expert witness, Henry Michael, a 40 year veteran retiree of Respondents AT&T-BELL before divestiture. Petitioner objected to the

experts impartial on-premise inspection whereby he was assisted by Respondent AT&T-IS'currently employed equipment repairman,Lonnie Norwood, who not only worked on the Petitioner's on-premise equipment in question for the year preceding this litigation, but as telephone repairman for Respondent BELL prior to divestiture and also having been assigned to work on same equipment prior to divestiture. (NR-43,44,45, 62 & 67) Norwood is also subject-participant of Petitioner's Motion for Injunction and Restraining Order of September 3, 1986 and whose on-going performance and loyalty to his employer,AT&T-IS, with whom was subject to his own civil rights grievance was pending during his assignment with Petitioner. (c) With respect to the above objections, Petitioner alleges impartiality in thatAT&T-IS attorney Frederic Artwick, actively participated in the inspection with the expert witness prior to impoundment. (d)District Court refused hearing on Petitioner's Motion for Default,

but allowing Respondent AT&T (New York) to file its Appearance and Motion to Dismiss after the Petitioner filed her Notice of Appeal and without a Rule 60 hearing or defense for AT&T's failure to file for one year three months after having been served. (A-6, Footnote 1)

Since the Seventh Circuit only reviewed the short records and failed to take up Petitioner's appeal in its entirety, it failed to address this issue altogether.

9, INTENTIONAL DECEPTION THROUGH MIS-USE OF STATE CORPORATE IDENTITY, FULL NAMES, ABBREVIATIONS AND COMBINATIONS THEREOF, TO MISLEAD, IS SUFFICIENT TO CONSTITUTE FRAUD UNDER RICO.

The Illinois Business Corporation Act of 1983 ("BCA"), revised, requires that foreign corporations doing business in Illinois must include the word "corporation", "incorporated," "company" or "limited" or an abbreviation thereof. Sec. 4.05(1) The Act further provides that if the name of a foreign corporation does not contain one of these words or abbreviations, the corporation shall add, at the end of its name, one of such words or abbreviations. In violation of this Act, Respondents AT&T and AT&T-IS knowingly and intentionally omitted its foreign corporate identification from its name in all of its correspondence, and the major part of its pleadings.

During 1986, Respondent AT&T-IS (Delaware) failed to remain in good standing with the State while transacting business within the State (EX.2) and during that time acknowledged itself to Petitioner as AT&T

(NewYork) (EX.1) as one and the same, even though it reinstated itself in 1987, after which Petitioner added it as a party Respondent. (NR-100) Prior thereto, AT&T-IS (DELAWARE) (EX.2) also represented itself to Petitioner and public as: AMERICAN TELEPHONE & TELEGRAPH INFORMATION SYSTEMS, INC.(without State corporate identity); AT&T INFORMATION SYSTEMS, INC. (without State corporate identity throughout ALL pleadings in District Court and Seventh Circuit records); AT&T INFORMATION SYSTEMS and AT&T-IS (without State or Corporate identity); AT&T-IS, INC. and AT&T INFORMATIONS, INC. (without state corporate identity); AT&T CONSUMER SALES & SERVICE COMPANY (EX.2); and AT&T EQUIPMENT, INC.(an Illinois Corporation, State Corporate ID No. 5323-855-6) in 1986. Except for that mentioned in Exhibit 2, none of the above are registered with State, in violation of Article 13, Sec. 1305 of BCC, which provides: "A foreign corporation organized

for profit, before it transacts business in this State, shall procure a Certificate of Authority from the Secretary of State."

In like manner, in AT&T-IS' representation of itself as AT&T in good standing with State (EX. 1), and later as agent of the New York entity, it represented AT&T as: AMERICAN TELEPHONE & TELEGRAPH CO (without corporate or State identity) -- 7th Circuit Appearance and Affidavits, 87-2125 & 87-2136; and NR-162-168,No.6); AMERICAN TELEPHONE & TELEGRAPH CO., INC.(without State corporate identity) NR-20 and Seventh Circuit Certificate of Interests, 87-2125 & 87-2236; AMERICAN TELEPHONE & TELEGRAPH INFORMATION SYSTEMS (not to be confused with the Delaware Corp. which adds the word "Inc.") - NR-20, NR-122; AT&T (NR20, 109, 122, 127, 130, 162-68); AT&TCo (NR-109, 162-168); AT&T STANDARD (NR-109, NR-162-168); AT&T GROUP SYSTEMS/AT&T SYSTEMS GROUP (NR-109, NR-162-168; NR-127, No. M1-15); and AMERICAN TELEPHONE & TELEGRAPH (no

identity) -NR-109, 162-168). The same use of names is applicable to BELL as a part of AT&T, agent for AT&T and for AT&T-IS. **THIS RESULTS IN INTENTIONAL MISLEADING, MISREPRESENTATION & FALSE PLEADING.**

Rule 2-611, Ill.Rev. Stat. Rule 2-611 Revised is equivalent to FRCP 11, requires attorneys to investigate before making factual statements, but attorneys for AT&T and AT&T-IS did not before representing to the Court in its pleadings of its non-existence or never having had the equipment (NR-20,NR-84 re AT&T-IS; NR-9,NR-81 re BELL). Such investigation would have indicated that AT&T and AT&T-IS were 2 entities; that AT&T and BELL were one prior to divestiiture (NR-109,162-168) and continue to exist (EX.1), However, since attorneys Sidley & Austin represent both AT&T and AT&T-IS, it is doubtful they had to investigate, they knew the truth but intended to deceive.

10. FAILURE TO PLEAD WITH PARTICULARITY ELEMENTS OF RICO OTHER THAN ELEMENTS OF PREDICATE ACTS INVOLVING FRAUD NOT SUFFICIENT TO CAUSE PETITIONER'S COMPLAINT TO FAIL.

Petitioner is not required to plead with particularity any of the elements of fraud in a RICO claim. Therefore the District Court erred in dismissing Petitioner's RICO claims with prejudice for this reason, since predicate acts were pleaded. Mauriber v. Shearson/American Express, inc., 567 F.Supp. 1231, 1341 n. 1 (S.D.N.Y. 1983); accord, Seville Industrial Machinery Corp. v. Southmost Machinery Corp., 742 F.2d 786, 792 n.7 (3rd Cir. 1984).

Further, the fact that a complaint is based on information and belief and is not accompanied by a formal statement of facts upon which the belief is founded does not require its dismissal when, as in Petitioner's case, the Complaint is supported with enough detail under the notice-type pleading allowed to apprise the opposing parties of the circumstances and

nature of the alleged fraud. Odette v. Shearson, Hammill & Co., Inc., 394 F. Supp. 946 (S.D.N.Y. 1975)

Contrary to the District Court's Memorandum Opinion, Rule 9(b) of FRCP must always be read in conjunction with Rule 8, which requires that a pleading contain only a short and plain statement of claim for relief.It is inappropriate to focus on Rule 9(b) to the exclusion of Rule 8 as in Petitioner's case since she had met the minimum requirement in alleging a cause of action under RICO. 5 Wright & Miller, Federal Practice and Procedure, 1298 at p.407; Ross v. A.H. Robbins Co., 607 F.2d 545, 557n.20 (2nd Cir. 1979), cert. den., 446 U.S. 946 (1980), Somerville v. Major Exploration, inc., 576 f.Supp. 902, 908 (S.D.N.Y., 1983); Zuckerman v. Franz. 573 F.Supp. 351 (S.D. Fla. 1983)' Pellman v. Cinerama, Inc., 503 F.Supp. 107, 110 9S.D.N.Y. 1980).

In Pellman, the Court ruled that all that is required is that the person charged with

the fraud will have a reasonable opportunity to answer the Complaint and adequate information to frame a response. In Ross, the Court added that the requirements of Rules 8 and 9 were both satisfied as long as the complaint affords opponents notice of the claims against them and evidences a reasonable belief on the plaintiff's part that the complaint has merit. Even if it can be argued that Petitioner has not met the standards required in alleging fraud, an allegation that transfers were made "with intent to defraud the plaintiff" was held sufficient. Consumers Time Credit, Inc. v. Remark Corp., 227 F. Supp. 263 (E.Ed. Pa. 1964).

It has been held that itemization was not necessary if special damages were pleaded, since defendant could obtain this through discovery. Great American Indemnity v. Brown, 307 F.2d 306 (5th Cir. 1962). In a more recent opinion, the Court held that the circumstances of the fraud and required

degree of particularity varies with each case, which rests on its particular facts. It is therefore not only unnecessary, it is improper for plaintiff to serve a complaint replete with evidentiary material, as the District Courts suggests in its Opinion. In re: Coleco Securities Litigation, 591 F.Supp. 1488, 1491 (S..D.N.Y.1984); 5 Wright & Miller, Federal Practice and Procedure, supra at p.409, Pellman v. Cinerama, Inc. 503 F.Supp. at 111.

11. PAYMENTS OVER A PERIOD OF YEARS UNDER INVOICED PURCHASE PLAN FOR TELEPHONE EQUIPMENT QUALIFY AS SALES OF COMMODITIES UNDER ROBINSON-PATMAN ACT.

15 U.S.C., 13. Robinson-Patman Act, Count VII. Contrary to District Court's Memorandum Opinion, Petitioner contends that she has standing to complain of price discrimination since she contracted to purchase equipment with BELL as agent for AT&T-IS, and later with AT&T-IS. (NR-109, NR-162-168, NOS.14(a)-(e);11,12,NR-127, Ex.M1-15), despite Respondents' decision years later to treat payments under the Flexible Purchasing Plan under AT&T-IS as lease payments while at the same

time billing Petitioner for the same equipment under AT&T for lease payments for the same equipment to be negotiated into the purchase price of new or replacement equipment pending approval by FCC. Since there were sales taxes added to the full price of the contract, which leases do not have, has no reason to believe other than the fact that sales taxes applied to sales, not leases. The words "Flexible Purchasing Plan" over hundreds of AT&T-IS invoices and "Purchase Agreement" on the contract represents a sale, not a lease.

The District Court's argument that the Act applies only to commodities of like grade and quality is without merit. The four on-premise switchboards and the six undelivered switchboards referred to in this Appeal are like in grade and quality.The new computerized equipment referred to in the Purchase Agreement is designed to perform like the manual switchboards. 15 U.S.C., Sec. 13(a).

Although repairs and services may be considered intangible, parts for equipment are NOT intangible, nor are the switchboards, lines and wiring. Contrary to the Opinion, Petitioner meets the standards required. Diehl & Sons, Inc. v. Int'l Harvester, 426 F.Supp. 110, 123 (S.D.N.Y. 1976); Ball Memorial Hospital, Inc. 784 F.2d 1325, 1340 (7th Cir. 1986);Blount Financial Services v. Walter F. Heller & Co., 632 F. Supp. 240,243 (E.D. Tenn.1986).

Petitioner alleges that price discrimination is applicable under the Act since rates as to purchase and lease are also discriminative as to race, ethnic background, and inconsistent with ICC and FCC regulations. (NR-109,NR-162-168, No. 14(a)-(e), 8(d). Windy City Circulating Co., Inc., v. Charles Levy Circulating Co., Inc., 550 F.2d 765, 767 (7th Cir. 1985); cf. Strauss v. City of Chicago, 760 F.2d 765, 767 (7th Cir. 1985). Therefore, the District Court's argument that price discrimination does not apply to Petitioner is in error.

12. INDIVIDUALLY EXECUTED CONTRACTS FOR A SERIES OF TELEPHONE EQUIPMENT & SERVICES, EXISTING & NON-EXISTING, REGULATED & DEREGULATED BUT IMPOSED UPON PARTY AS ONE CONTRACT & ONE PRODUCT, IS SUFFICIENT TO SATISFY TYING CLAUSE OF SHERMAN ACT.

15 U.S.C., Sec. 1. Sherman Act. Count V.

District Court errs in treating the five separately executed contracts for ten individual switchboards, contracts for DID telephone numbers, contract for new replacement equipment, as one contract and one piece of equipment. The date, time, place and subject matters for each contract is distinct and separate as company name, consideration, and duration. The four on-premise Boards referred to (NR-91) with 1970 and 1975 expired prior to divestiture, the 5 year contracts entered into in 1980 expired before litigation in February 1986, the five-year DID contracts of 1984 expire in 1989. The Court's interpretation defies the law of contracts and elements required.

Although Petitioner has had to submit to Respondents' imposed and forced tying arrangements to stop interruption of entire

service by Respondents, she challenges the legality of these acts submitted to under duress: (a) Respondents' requirement of payment on non-existent service contract under Flexible Purchse Plan; (b) Respondents' requirement of payment of lease-rental to AT&T while making purchse payment to AT&T-IS for same equipment to protect both Respondents pending outcome of on-going FCC litigation; (c) Respondents' requirement of payment of de-regulted equipment with regulated numbers after divestiture, as one payment; (d) Respondents' requiement of payment on functional and non-functioning, existing and non-existing equipment, tying contracts of all sales and leases as one to enforce payment, with refusal to pay on any one of the above a termination of all contracts and equipment and services. Again, the tying in of each of these distinct markets for each, tying in as one, is sufficient to qualify as violations under the Sherman

Act. KFC Corp. v. Marion Key Co., Inc., 620 F. Supp. 1160,1169 (S.D.Ind. 1985); Jefferson Parish Hospital Dist. No. 2 v. Hyde, 466 U.S. 2, 21 (1984); cf. Nordic Bank PLC v. Trend Group Ltd., 619 F. Supp. 542, 559 (S.D.N.Y. 1975).(cf. McGee v. 1st Federal S & L Assn, 761 F.2d 647 (11th Cir. 1985) as reflected in the Memorandum Opinion does not apply to Petitioner's case or circumstances.)

13. PERSONALIZED AS OPPOSED TO MECHANICALIZED TELEPHONE ANSWERING SERVICES MEET STANDARD OF "COMPETITION" SET BY LANHAM ACT.

15 U.S.C., Sec. 1125.Lanham Act. Count VI.

Contrary to District Court's opinion, Petitioner is not only a consumer and a competitor of Respondents, with the difference as to "competitor" being that Petitioner offers live, personalized telephone answering service whereas Respondents offer telephone answering machines, either directly or through third party vendors. (NR-109;NR-162-168,Nos.15,16

The BELL subsidiaries have case pending before FCC on plans to extend further into the telephone answering service portion of the industry.

Therefore, Petitioner meets the standard of competition set by the act, and has standing to pursue a claim for violations thereof. In re Agent Orange Product Liability Litigation, 475 F. Supp. 928, 934 (E.D.N.Y. 1979); Gimex, Inc. v. JS&A Group, Inc. 599 F.2d 901, 908 (7th Cir. 1983).

14. THOUSANDS OF INDIVIDUAL MAILINGS & PHONE CALLS BY RESPONDENTS OVER YEARS FOR SAME PRODUCT & SERVICES, FOR CHARGES IN VIOLATION OF FEDERAL & STATE AGENCY & ANTI-TRUST REGULATIONS, SATISFY PATTERN REQUIREMENT OF RICO. 18 U.S.C.1961-1965(a).

Respondents' actions indicate a "pattern" consistent with recent District Court and Appellate Court decisions when referring to their thousands of mailings and collection procedures to unlawfully secure themselves pending their on-going litigation with FCC, by invoicing under AT&T for lease-rental on each of the Boards contracted for prior divestiture, with duplicate invoicing under AT&T-IS for the same equipment,period and amount under a purchase plan (NR-127,No.M1-15), by fraudulently representing refunds or that monies would be applied on sales, but with no intention of honoring either representation, and setting outa pa ttern and scheme under RICO. Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S.479, 496n.14 (1985).This applies equally to BELL as its admission of agency to Respondents.(NR-9,81)

The relevant mail fraud and wire fraud

statutes of RICO require only two essential elements:(1) a scheme to defraud and (2) the use of the mails in furtherance of the scheme, both criteria met by Respondents conduct. 18 U.S.C., Sec. 1341,1343 (1985). U.S. v George, 477 F.2d 508 (7th Cir. 1973).The virtually simultaneous shootings of police officers were regarded as three separate predicate acts, less than the over thousand separate mailings and phone calls by Respondents. U.S. v. Watchmaker, 761 F.2d 1459, 1475 (11th Cir. 1985). Merely two instances of obstruction of justice, although part of a single criminal episode were garded as separate predicate acts, less than the 50 line interruptions by Respondents toward Petitioner in one day (NR-31-33).U.S. v. Gambale, 610 F.Supp. 1515, 1548-49 (D.Mass. 1985). The above acts do not include those by attorneys Sidley & Austin direct. 18 U.S.C,,Sec.1951(a).

Acts of mail fraud and wire fraud arising out of a common neucleus of facts, as

petitioner's nucleus of facts arising from divestiture. Beth Israel Medical Center v. Smith, 5765 F.Supp. 1061, 1066 (S.D.N.Y. 1983) The Seventh Circuit has regarded two or more occasions defendants used mails in conducting the enterprise involved as this case, related to a scheme to direct applicants from plaintiffs to Respondents' customers, as sufficient to satisfy the pattern of racketeering in RICO. Physically disrupting service with threat during course of business to obtain results is also covered by RICO. (NR-31-37) Systems Research v. Random, Inc., 614 F.Supp. 494 (N.D.Ill.1985); Flowers v. Cont'l Grain, 775 F.2d 1051, 1053 (8th Cir. 1985). 18 U.S.C.,Sec.892,894;1951(a)Hobbs Act.

It has been held that when only two acts which are related to each other and arise out of thesame scheme are alleged in the Complaint, the requirement of pleading a pattern of racketeering has been met, which qualifies Petitioner's claim in this Act ,contrary to Opinion.Conan Properties,Inc. v.Mattel, Inc., 619 F.Supp.1167 (S.D.N.Y. 19850 Here,

the pattern requirement is met in pleading a scheme in a claim if only two separate and distinct schemes are alleged as set forth in Sedima, both criteria met in Petitioner's allegations of double invoicing for sales and lease of same product and interrupting 50 of Petitioner's separate accounts to refer to Respondents' preferred list of answering services.

There is no requirement that the enterprise benefit from the defendnts' activities or that the enterprise be corrupt, or that the defendants enhanced their positions in the enterprise structure to satisfy RICO as Respondent contended in its Reply Memo.(NR-96) U.S. v. Scott, 641 F.2d 47,54 (2d Cir. 1980), cert. den. 452 U.S. 961 (1981).

Petitioner has established the "nexus" requirement of RICO in her Statement of Facts and throughout, including discovery deposited with court (NR-162-168) by pointing out the agency relationship of the parties, already admitted by

them.(NR-9,20,81-84), and is not required to prove or plead direct participation or management and control of each of the enterprises in question with regards to the above relationship since Respondents have admitted the agency relationships.

Under the conspiracy theory, only one overt illegal act is necessary to establish liability against all defendants. Halbertstam v. Welch, 705 F.2d at 477. The general principle of notice pleading is governed by Rule 8 and applies to the elements of conspiracy, even in cases in which the alleged conspiracy is to defraud Plaintiff, as Petitioner has alleged. Kravetz v. Brukenfeld, 591 F.Supp.1383, 1387 (S.D.N.Y.1984) Rule 9(b) should not then work to penalize one merely because he or she was not privy and therefore cannot plead the details of the inner workings of a group of defendants as in this case. Itis only required that opposing party be given fair notice of claims and grounds in which they rest, which Petitioner has done. Id. at 1387-88. The Rule does not require

Petitioner to state how defendants conspired among themselves or exactly what they did with theproceeds from alleged acts of racketeering. Id. 567 F.Supp. 1241, n.1.

A pattern will exist where several predicates are directed at more than one person, company or entity and that plaintiff is injured by the overall scheme, applicable to Respondents acts toward each of Petitioner's answering services, clients on her answering service, and other persons with whom she does business with. Four forgeries commited which were related in victim, method and perpetrator having independent harmful significance, constituted "separate episodes" orpredicate acts and a pattern in Ghouth v. Conticommodity Serv. Inc. 642 F. Supp. 1325 (N.D.Ill. 1986).

Under RICO, those participating in acts providing inaccurate and misleading information to another with intention to deceive and mislead, as attorneys misrepresenting Court (Section 9 herein),misrepresenting lease and purchase

and application of monies collected therefrom, installation and repairs by Respondents to Petitioner qualify under this rationale. Media General, Inc. v. Tanner, Fed. Sec. L.Rep. (CCH), 92,458 (W.D. Tenn. 1985)

District Court errs in regarding this case as a mere breach of contract, since many contracts are involved with rates and charges, collection procedures and agency regulations are at issue, with allegations of violations of 83Ill.Adm. Code, Part 735, S.730.130, and guidelines set under U.S. v.AT&T and U.S. V. Western Electric, supra, and FCC regulations resulting therefrom(NR-109,NR-162-68, 1-5). One deceptive letter in any one of these FCC or ICC violations is sufficient to constitute a mail fraud, one phone call wire fraud, when if the Court regards all of the above as ONE contract, when there are allegations regarding injury to one's business, reputation and goodwill, together will loss of revenues, all pointed out earlier in

numbers. Note that this rule extends to representatives, as Respondents' attorneys, who actively participated in its clients' actions when it had a duty to investigate and did not.Wang Laboratories v. Burts, 612 F.Supp. (D.Md. 1984); Ill.Rev.Stat. 2-611 Revised.(18 U.S.C. Sec.1961,62,62(a)

The District Court's rationale of the entire prospective as to the events in the case are taken out of context, which should be left to a jury. The following cases are therefore not applicable to Petitioner's case in fact or legal theory. Elliott v. Chicago Motor Club, Ins. 809 F.2d 347,350 (7th Cir.1987); Lipin Enterprises Inc v. Lee, 803 F.2d 322, 324 (7th Cir. 1986); Analysts Int'l Corp v Recycled Paper Products, Inc., No. 85 C 8637, Memo Op. at 17-19 (N.D. Ill. 6/19/87, Grady, J.)

In summary, Petitioner has met all the necessary criteria/elements with respect to pattern and fraud requirements of RICO.

15. DISMISSAL UNDER FRCP 12(b)(6) FINAL JUDGMENT IF PLAINTIFF CHOOSES TO STAND ON VALIDITY OF COMPLAINT RATHER THAN REPLEAD.

Rule 12(b (6) regards a dismissal "Final" if plaintiff chooses to stand on validity of Complaint rather than replead as ordered August 3, 1987.(NR-138) Petitioner's actions in proceeding with an Appeal by filing Notice (NR-139) and Appeal Brief with the Seventh Circuit on August 24, 1987 confirms her intentions in conformance with the Rule, and respectfully requests this Court to treat that dismissal(A-5,6) as final.

16. SEVENTH CIRCUIT DOCKET SHEET MISLEAD WITH CLERICAL ERRORS, INACCURATE POSTINGS & OMISSIONS SUFFICIENT TO ALTER COURSE OF APPEAL & FURTHER PROCEEDINGS.

(a) Petitioner's Appeal Brief, due September 15, 1987 based on Appeal of July 8, 15 and 31 orders, is not docketed on any of the Seventh Circuit Docket sheets, presenting an appearance of an Appeal not being filed.(EX.3-4-5)

(b) Seventh Circuit based its decisions on short record,rather than entire records.District Court records did not

arrive at the Seventh Circuit until 3 days afterthe August 24 hearing and dismissal.

(3)Appellate Rules provide that Petitions filed after hearing, if this is case, be considered as "Re-Hearing", which did not occur. Mandate entered September 15, 1987.

(4) Postings on 87-2125,87-2136 and 87-8042 are crossed randomly as if all one appeal, and do not reflect accuracy of each appeal.

CONCLUSION

Petitioner believes she has a meritorious cause of action and will prevail at trial. Therefore, Petitioner prays that this Court grant this Petition for Writ of Certiorari or, in the alternative, review as a direct appeal under the Expediting Act as to jurisdictional claims, and that an Order be entered consistent with U.S. Supreme Court, other Appellate Circuit Court and district court prior rulings; that the District Court and Seventh Circuit's findings be reversed, and case remanded for trial.

Respectfully submitted:

Rosee Torres

Supreme Court, U.S.
FILED
NOV 21 1987
SPANIOL, JR.
CLERK

87 - 1153
No.

In the Supreme Court of the United States

OCTOBER TERM, 1987

ROSEE TORRES, d/b/a LEGAL SECRETARIAL SERVICES, LTD., TELEPHONE SECRETARIES UNLTD., DOCTORS HELPER and ATTORNEYS HELPER,

Petitioner,

v.

ILLINOIS BELL TELEPHONE COMPANY, an Illinois Corporation, AMERICAN TELEPHONE & TELEGRAPH INFORMATION SYSTEMS a/k/a AMERICAN TELEPHONE & TELEGRAPH CO., INC., A/K/A AT&T, a New York Corporation and AT&T INFORMATION SYSTEMS, INC. a/k/a AT&T-IS, INC. a/k/a AT&T-IS, a Delaware Corporation,

Respondents.

APPENDIX

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PRO SE
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Chicago, Illinois 60606
(312) 263-0757

52 pp

A P P E N D I C E S

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8. District Court Order of September 23, 1987

APPENDIX 1

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT, EASTERN DIVISION

TORRES V. BELL, AT&T and AT&T-IS 86 C 1718

MINUTE ORDER - JUDGE GRADY - JULY 8, 1987

MOTION

(1)Plaintiff (2) Motion to file Second Amended Complaint Instanter naming defendant, AMERICAN TELEPHONE & TELEGRAPH INFORMATION SYSTEMS, INC., a Delaware Corp., and (3) Plaintiff's Motion for Default Judgment against defendant AMERICAN TELEPHONE & TELEGRAPH CO., a New York Corporation, for failing to appear, answer or otherwise plead.

ORDER

Plaintiff's Motion for Default Judgment against American Telephone & Telegraph Co., a New York Corp., is hereby denied. Pursuant to Rule 11, the court finds that the said motion has been filed frivolously and in bad faith. The Court will assess $300.00 against Plaintiff to be paid to American Telephone & Telegraph Information Systems, Inc. within 10 days of entry of this Order. (NR-102)

APPENDIX 2

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT, EASTERN DIVISION

TORRES V. BELL, AT&T and AT&T-IS 86 C 1718

MINUTE ORDER - JUDGE GRADY - July 15, 1987

MOTION

(None on Record)

ORDER:

Enter Order correcting the Court order dated July 8, 1987 to read "the sanctions of $300.00 are to be paid to AT&T Information Systems, Inc." Remainder of Order to stand.

(NR-107)

1/ Note that Respondent AT&T Information Systems, Inc.(EX.2) was not added as a party until July 8, 1987 (NR-102) after Petitioner's discovery that they were not the same entity as the New York Corp. (EX.1) as Petitioner was led to believe. Further, this party (same as A-1) was not the subject or party of Petitioner's Motion for default as District Court indicated in its Memo. Op.

APPENDIX 3

UNITED STATES DISTRICT CO

NORTHERN DISTRICT, EASTERN DIVISION

TORRES V. BELL, AT&T & AT&T-IS,JULY 22,1987

TRANSCRIPT OF PROCEEDINGS, LAURA BRENNAN

TORRES: But for the record, Your Honor, I want to tell you this default judgment that I have is not against the company that she (Pamela Hanebutt, Sidley & Austin) represents; it is against the New York Company. It isnot against her company at all.

THE COURT: I understand, but she was nonetheless, required to respond to the motion.

TORRES: Okay.

THE COURT: I want you to have your stay pending appeal if this is an appealable order. Now, whether it is an appealable order, I don't know. I think it is, but I am not 100 percent sure. (pp.7, lines 22-24;

pp. 8, lines 1-10.

Marty, insteadof having a supersedea, Miss Torres will simply pay the money, but the understanding is that if it is reversed, you give the $300 back. Now, the petition for

interlocutory appeal, that is all also here.

I am not going to certify this for an appeal under Section 1292,because I don't think it falls within that rationale. In other words,this isn't something that is going to shorten the litigation. So this isn't a proper order for certification pursuant to that statute. That does not mean that you don't have an appealable order. I tend to think it is on the basis that it is collateral to the litigation and it is final unless reversed. p.9, lines 16-25;p.10,lines 1-6.

THE COURT: I will deny the petition for interlocutory appeal only because I believe that the conditions of 28 U.S.C., Section 1292 are not met, but I express no opinion on the question of whether this is an otherwise appealable order. (p.10, lines 16-20)

Judge Grady

APPENDIX 4

UNITED STATES COURT OF APPEALS

SEVENTH CIRCUIT

TORRES V. BELL, AT&T & AT&T-IS 87-8042

Hon. William J. Bauer, Chief Judge

Hon. Walter J. Cummings,Circuit Judge

Hon. Michael s. Kanne, Circuit Judge

PETITION

Petitioner's "Petition for Permission to Appeal Pursuant to 28 U.S.C., 1292 and Petition for Interlocutory Appeal filed July 16, 1987

ORDER

This matter comes before the Court for consideration upon the "Petition for Interlocutory Appeal" filed herein on July 16, 1987. The order that is the subject of this Petition has not been certified for Interlocutory appeal under 28 U.S.C., Sec. 1292(b) by the District Court. Accordingly,

IT IS ORDERED that said motion is DENIED.

July 24, 1987

APPENDIX 5

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT, EASTERN DIVISION

TORRES V. BELL, AT&T & AT&T-IS JULY 31,1987

MINUTE ORDER - JUDGE GRADY- 86-C 1718

MOTION

The minute order form does not indicate, but this is Court's answer to Respondents' Motion to Dismiss and Motion for Summary Judgment of August 8, 1987 (NR-81,82)

ORDER

Enter Memorandum Opinion. Counts V-XI of the Complaint are dismissed for failure to state a claim under Rule 12(b)(6). Counts I-IV are dismissed for lack of subject matter jurisdiction under Rule 12(b)(1). Plaintiff is given leave to file an amended complaint alleging race discrimination under 42 U.S.C., Sec. 1981 or 1982. **(NR-138)**

APPENDIX 6

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT, EASTERN DIVISION

TORRES V. BELL, AT&T and AT&T-IS 86 C 1718

JUDGE GRADY (NR-138) JULY 31, 1987

MEMORANDUM OPINION

This case is before us on separate motions of the two defendants. Defendant Illinois Bell Telephone Company ("Bell") moves for summary judgment against pro se plaintiff Rosee Torres ("Torres"). Defendant AT&T Information Services, Inc. ("AT&T-IS") moves to dismiss Counts II-XI of plaintiff's Second Amended Complaint ("Complaint") for failure to state a claim. For the reasons stated below, the complaint is dismissed as to both defendants: Counts V-XI are dismissed for failure to state a claim under federal law and Counts I-IV are dismissed for lack of jurisdiction.

FACTS AND PROCEDURAL SETTING

Plaintiff Torres is the sole proprietor of a telephone answering service known as "Legal Secretarial Services, Ltd., Telephone Secretaries Unltd., Attorneys Helper,

and Doctors Helper," all located in Chicago. Complaint, Count 1 at Para.2. She alleges that in 1970 she entered into a contract with Bell for the "manufacture, leasing, and installation," of four telephone answering switchboards to be used in her business. Id. at Para.7 In January 1984, pursuant to the court ordered divestiture of the Bell System, Bell assigned its rights under the contract to AT&T-IS.[1] Id. at Para. 10. Shortly afterward, both Bell and AT&T-IS informed plaintiff that they had ceasedmanufacture of the switchboards and no longer had access to parts for their maintenance. However, they told plaintiff that the lease contrcts would remain in effect until 1992. Id. at Para. 11. Plaintiff contends that defendants refused to service the switchboards effectively despite her requests and that this hurt her business. Id. at Para. 12-14.

In the first four counts of the complaint, which are based upon state law, plaintiff maintains taht the actions of defendants constitute a breach of contract (Count 1). She

also alleges that the defendants used economic coercion and extortion to induce her to terminate the contract (Count II); that defendants'"knowing and reckless" damaging of the switchboards "tortiously interfered with plaintiff's leased equipment" (Count III); and that defendants defrauded her (Count IV). The next six[2] counts allege violations of federal law and will analyzed in detail in the next section.

AT&T-IS has moved to dismiss all but Count I of the complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Bell has moved for summary judgment pursuant to Rule 56, stating that plaintiff's controversy is exclusively with AT&T-IS and that any complaint against Bell is within the exclusive jurisdiction of the Illinois Commerce Commission. Bell also contends that the complaint fails to state a federal cause of action. Bell's Motion for Summary Judgment at 1. (End of Page 2)

As outlined below, we agree with both defendants that plaintiff has failed to state a federal claim in Counts V-XI of the complaint and we will dismiss those counts with prejudice under Rule 12(b)(6), with the exception of count X, which we allow her to amend to state a cause of action under 42U.S.C., Sec. 1981 or 1982. Because we find that complete diversity is lacking among the parties, we will dismiss the state law claims as well unless plaintiff amends her complaint to state a federal claim.[3]

DISCUSSION

Federal Claims

1. Antitrust(Sherman Act)-Count V

In Count V, plaintiff alleges that defendants violated the Sherman Act, 15 U.S.C., Sec. 1, by coercing and enforcing a "tying arranggement to the contract" whereby plaintiff was reuired to purchase both a long and a short-term maintenance and service agreement as a condition of the lease, even though such service would no longer be offered, and the defendants were unable to

perform under such terms." Count V, para. 18. Plaintiff also seems to allege that defendants' conditioning of new contracts and equipment upon her keeping up service payments constitutes an illegal tying arrangement. Id. at para. 19.

A tying arrangement violative of the Sherman Act occurs when a buyer is permitted to purchase a desired (tying) product only if he agrees to buy a second, generally unwanted (tied) product from the seller. KFC Corp. v. Marion Key Co., Inc., 620 F. Supp. 1160, 1169 (S.D.Ind.1985). The "tied" product, alleged here to be the service on the switchboards, must be in a distinct market from the "tying" product, alleged here to be the lease of switchboards. See Jefferson Parish Hospital Dist. No. 2 v. Hyde, 466 U.S. 2,21 (1984). (End of Page 3)

Defendants argue that only one product--the lease of switchboards--is involved in this instance. We agree. AT&T-IS leases the switchboards to plaintiff, as did Bell prior toBell prior to 1984; the plaintiff

did has not not purchased the equipment. Leasing equipmentand then serving it are not two separate "products" for antitrust purposes; rather, the service requirement is a valid condition of the single lease contract. Because the defendants have an interest in maintaining equipment that they still own, maintenance is provided to benefit the defendants, not the plaintiff. Cf. McGee v. First Federal Savings and Loan Ass'n., 761 F.2d 647 (11th Cir. 1985).

Indeed, the rest of the allegations in Count V reinforce the notion that this count of the complaint is merely a restatement of plaintiff's central cause of action, the breach of the agreement by the defendants to lease and maintain working switchboards. She alleges that she was not allowed to rescind any specific contract with the defendants without being regarded as in violation of all her other contracts with them. Count VI at Para. 19. This "tying" of separate contracts does not lead to antitrust liability, however, as there is no indication that the separate

contracts were for separate product with separate markets. It seems that plaintiff wanted to end the contracts on non-functioning switchboards while keeping the others.Plaintiff adds that the "tying arrangements" are "unilateral and represent gross modifications of the original contractual/leasing arrangement." Id. at Para. 24. Again, the plaintiff complains about a breach of a contract rather than a violation of antitrust law. See Snellman v. A.B. Dick Co., No. 81 C 3048, Memorandum Op. at 13-14 (N.D. Ill. march 20, 1987)(Grady, J.)

In her memoranda opposing the defendants' motions, plaintiff makes several wholly new allegations to support her antitrust claim.It is axiomatic that (End of Page 4) the complaint may not be amended by the briefs in opposition to a motion to dismiss. Car Carriers, Inc. v. Ford Motor Co., 745 F. 2d 1101, 1007 (7th Cir. 1984).However, even if the new allegations in the memoranda were incorporated into plaintiff's complaint,[4] they would not be sufficient to defeat dismissal. Plaintiff alleges an unlawful tie exists

between the leasing of switchboards and the "hundreds of separate product markets" found in the use of phone lines and numbers assigned by Illinois Bell. Plaintiff's Response to AT&T-IS' Motion at 10-11; Plaintiff's Response to Bell's Motion at 17-18.[5] However, no separate product market exists for telephone lines and numbers, Asplaintiff has alleged in her complaint, Bell has a government sanctioned monopoly in providing local phone numbers. Count 1 at Para. 16. Because no competitive market exists for this allegedly "tied" product, this connection cannot be the basis of an antitrust violation. Cf. Nordic Bank PLC v. Trend Group, Ltd. 619 F. Supp. 542, 559 (S.D.N.Y. 1985).

Plaintiff also argues in her memoranda that the defendants treated the lease and maintenance as "two distinct products when it became apparent that AT&T was unable to assume quality control over repairs, which contradicts defendants motion." Plaintiff's Response (AT&T) at 11. This does not "contradict" the claim that only one product

is a issue; it is only a further assertion by plaintiff that defendants breached the service aspects of the unified lease agreement. Plaintiff's claim under the Sherman Act is dismissed with prejudice.

2. Antitrust (Robinson-Patman Act)-Count VII

Plaintiff alleges that defendants' "unfair and injurious pricing tactics" violate the Robinson-Patman Act, 15 U.S.C., Sec. 13. However, her complaint fails (End of Page 5) to state a claim under that statute. As to discriminatory pricing for the switchboard leases, the robinson-Patman act applies only to "sales" of commodities, not to "leases". Diehl & Sons v. Int'l Harvester Co., 426 F. Supp. 110, 123 (S.D.N.Y. 1976). Further the allegation of disparate pricing for maintenance services is unavailable because the Robinson-Patman Act applies only to "commodities of like grade and quality." 15 U.S.C., Sec. 13(a). Services such as those provided to repair equipment are "intangible" goods are are not covered by the Act. Ball Memorial Hospital, Inc. 784 F.2d 1325, 1340

(th Cir. 1986); Blount Financial Services v. Walter E. H eller & Co., 632 F.Supp. 240, 243 (E.D. Tenn. 1986)

Plaintiff's assertion in her response that defendants did sell obsolete switchboard equipment pursuant to discriinatory pricing schemes does not advance her effort to state a claim. Plaintiff has never alleged that she purchased any equipment from either defendant, and therefore has no standing to complain of price discrimination. Windy city Circulating Co., Inc. v. Charles Levy Circulating Co., Inc., 550 F. Supp. 960, 966 (N.D. Ill. 1982).

3. Lanham Act

Count VI recites allegations under the "Lanham Anti Trust Act" (sic). Plaintiff complains of the defendants' "false and misleading representations as to both service and maintenance" (Count VI at Para. 18 and their use of "monopolistic control to deceive (their) subscribers as to work performed" (Id. at Para. 19). Because plaintiff has alleged antitrust violations in two other counts in the complaint, we assume that in this count she is trying to state a claim under section

43(a) of the Lanham Act, 15 U.S.C., Sec. 1125(a), which prohibits false descriptions and markings in advertising and trademarks. Yet the Lanham Act (End of Page 6) provides remedies only for business competitors, not for consumers or members of the general public alleging victimization by unscrupulous commercial conduct. In re Agent Orange Product Liability Litigation, 475 F.Supp. 928, 934 (E.D.N.Y. 1979) Leblanc v. Spector, 378 F. Supp. 301 (D.Conn. 1973)

Plaintiff attempts to completely restate her claim in her responsive memorandum, arguing that her telephone answering service "competes" with AT&T'S telephone answering machines "which perform the same duties that plaintiff's business performs manually." Plaintiff's Response (AT&T) at 21. Even if we assumed that competition did exist on this basis, plaintiff still has failed to state a Lanham Act claim, as she has failed to allege that the deceptive actions of the defendants caused confusion among purchasers leading to a diversion of sales from plaintiff to

defendants. Gimix, inc. v. JS&A Group, Inc., 699 F.2d 901, 908 (th Cir. 1983). count VI is dismissed with prejudice.

4. FTC Act

Plaintiff alleges in Count VII that defendants "are guilty of a series of violations of the Federal Trade Commission Act in forcing and coercing payments from plaintiff through illegal and unlawful tactics." Count VIII at Para.22. She even details five instances of malicious and "threatening" behavior by the defendants intended to disrupt her business and compel payments. Id. at Para. 22(a-e) There is no right of action available to private plaintiffs under the FTC Act, 15 U.S.C. Sec. 45 et seq. Moore v. new York Cotton Exchange, 270 U.S. 593, 603 (1926); Akers v. Bonifasi, 629 F.Supp. 1212, 1221 (M.D. Tenn. 1984). Plaintiff's attempt in her response to allege racial discrimination and to "apply" various civil rights statutes "to this section" does nothing to change the fact that Congress vested (End of Page 7) exclusive remedial

power under the FTC Act in the Commission. Count VIII is dismissed with prejudice.

5 Fourteenth Amendment

In Count X, plaintiff alleges that defendants "showed disparity racially" in failing to properly service her equipment and in quoting prices. Plaintiff claims that this behavior and defendants' interference" with her right to contract amounts to a violation of her rights under the Fourteenth Amendment. Count X at Para. 51. Defendants argue correctly in their motions that the fourteenth Amendment does not govern private action and that the status of AT&T-IS and Bell as publicly regulated companies does not convert their actions into "state action" for purposes of the Fourteenth Amendment. Jackson v. Metropolitan Edison Co., 419 U.S., 345, 350 (1974).

Plaintiff responds by attempting to formulate another new basis for this use of action, stating that her discrimination claims are "based on constitutional guarantees under the Thirteenth and Fourteenth Amendments" as

well as the federal civil rights statutes--42 U.S.C. Sec. 1981,1982, 1983 and 1985(c). Putting aside the fact that plaintiff is again try-ing to cure pleading defects through her memorandum in oppostion, the new allegations are still insufficient to state a claim. Plaintiff has not alleged that defendants were acting "under color of state law" and therefore has not stated a claim under section 1983. Papatropolos v. Milwaukee Transport Services, 795 F.2d 591, 595 (7th Cir. 1986). As to the other statutes, the allegations on the whole are notably lacking the minimal detail needed to support a claim under the civil rights statutes, as plaintiff states that racial discrimination was present "(i)n dozens of (end of Page 8) separate instances plaintiff found too numerous to detail in a notice-type pleading allowed by the Federal Courts, and which will be presented through adequate discovery and at the trial...." Plaintiff's Response (AT&T) at 37. Plaintiff has alleged no facts to suggest that the

racial animus on the part of the defendants; rather, she states that her rights were infringed "many times" by the defendants, who alter their policies "where race and/or hispanic origin come into play." Her attempts in the responsive memoranda to describe instnces of racially motivated actions by the defendants are conclusory and unsupported by facts. Plaintiff's Response AT&T) at 37-39.

However, we acknowledge that it is at least conceivable that plaintiff might be able to state a claim against the defendants under either section 1981 or 1982, which do not require an allegation of :"state action." Runyon v. McCrary, 427 U.S. 160, 168-74 (1976). we will therefore give plaintiff leave to amend her complaint to state a claim under either or both of these sections. To sue under section 1981, a plaintiff must allege racial discrimination in one of four enumerated activities: making and enforcing contracts; suing in court and giving evidence; securing all benefits of law (e.g., welfare benefits, road access);and receiving punishment,

licenses, taxes and penalties. Brown v. Federa tion of State Medical Boards of the United States, No. 82 C 7398, Memorandum Op. at 11 (N.D. Ill. May 31, 1985) (Grady, J) We 11 (N.D. Ill. may 31, 1983) (Grady, J.) We gather from the material submitted that plaintiff believes her race was a factor in defendants' refusals to sell equipment to her and disrupting her attempts to contract with clients and other answering (End of Page 9) services. Plaintiff's Response (AT&T-IS) at 37-38. This conduct could also possibly be sufficient grounds to state a claim under Section 1982, which gives all citizens of the United States the same right "as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

In granting plaintiff leave to amend, we caution her that she should amend the claim only if she can provide a sufficient factual and legal basis for doing so. She must allege (1) intent to discriminate against her because of race; (2) subsequent injury; and (3) nexus

between defendants' conduct and a right to contract (section 1981) or sell or lease property (section 1982). Brown, Memorandum Op. at 13. As noted in our assessment of her present allegations, she must not simply recite that defendants did discriminate against her and injure her, but she must also provide us with the operative facts--examples of the defendants' conduct--that support these claims. Rodgers v. Lincoln Towing Service, 771 F.2d 194, 198 (7th Cir. 1985). We remind plaintiff that any amended filing that does not meet these minimal requirements may subject her to sanctions under Federal of Civil Procedure 11.

6. RICO

Count IX of the Complaint purports to state a claim under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C., Sec. 1961 et seq. ("RICO"). Plaintiff incorporates the allegations of the first eight counts of the complaint into this count and states that "(d)efendants used a pattern of racketeering

activity in collection of an unlawful debt on numerous occasions as set forth (in those allegations)." Count IX at p= Para. 46(a).

(End of Page 10)

In order to plead a RICO violation a plaintiff must allege that the defendant received income, maintained interest in an enterprise, or conducted an enterprise "through a pattern of racketeering activity or the collection of an unlawful debt." 18 U.S.C., Sec. 1962(a-c). An "act of racketeering activity" is defined to be one of certain enumerated federal crimes found in 18 U.S.C., Sec. 1961(1), and a "pattern" means "at least two acts" of that activity under section 1961(5). Sedima, S.P.R.L. v, Imrex Co., Inc., 473 ;U.S. 479, 496 n.14 (1985)

The allegations of the first eight counts, incorporated as paragraphs 1-45 of Count IX, do not include any of the federal offenses enumerated in section 1961(1). Nor can plaintiff's claim that defendants engaged in "the collection of an unlawful debt" support her RICO claim, as section 1961(6) defines

"unlawful debt" support her RICO claim, as section 1961(6) defines "unlawful debt" as that produced by gambling or usurious loans, neither of which must rest on plaintiff's allegations that defendants committed the "predicate acts" of interfering with commerce under the Hobbs Act, 18 U.S.C., Sec. 1951(a), or engaged in extortionate credit transactions in violation of the federal loansharking statute, 18 U.S.C., Sec. 892, 894.

The Hobbs Act makes it a crime to obstruct commerce "by robbery or extortion" or by committing or threatening "physical violence to any person or property in furtherance of a plan" to violate section 1951. The only allegations in the complaint that support the Hobbs Act claims are found in the state law counts, where plaintiff charges that defendants sabotaged the switchboard equ8ipment (Count III, Para. 18(a) and extorted money from her (Count II at Para. 18). However, these bare allegations are not enough to establish a predicate act of

racketeering activity under the Hobbs Act, which defines extortion as obtaining (End of Page 11).property from another with consent "induced by wrongful use or actual or threatened force, violence, or fear or under color of official right." 18 U.S.C., Sec. 1951(b)(1).

Plaintiff nowhere alleges that defendants threatened her with the use of physical force, violence, or their power as officials. We take it that plaintiff is alleging that her fear of economic loss through discontinuation of her phone service and disruption of her business allowed the defendants to take her property from her. Yet to characterize the defendants' "threats" to cut off her phone service as a Hobbs Act violation, in the absence of more detailed allegations of wrongdoing by the defendants, would result in an overly broad application of that statute. "To interpret the word 'fear' in the federal criminal statute prohibiting extortion to cover this kind of conduct would encompass almost any tort causing economic industry

affecting interstate commerce." Flowers v. Continental Grain Co., 775 F.2d 1051, 1053 (8th Cir. 1985). Bell has argued that disconnection of a non-paying customer's service is a legitimate right under the terms of the contractual arrangement. Bell's Reply Memorandum at 7-8 (citing 83 Ill.Adm. Code, Part 735, Sec. 730.130). Plaintiff has simply not stated a predicate act based on the federal extorion statute.

Plaintiff's attempt to create a predicate act on the federal loansharking statute is simimarly unsupported by a factual allegations. To charge a defendant with making "extortionate extensions of credit" under 18 U.S.C., Sec. 892, one must allege an understanding between the creditor and the debtor at the time credit is extended that delay in repayment "could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person." 18 U.S.C., Sec. 891(6). Even if plaintiff had alleged that credit was extended

(End of Page 12) to her by defendants, she

certainly has not claimed that "violence or other criminal means would be used to harm her or her property."

Even if we took the new allegations of the plaintiff's response into account, she has not stated the existence of the two "predicate acts" required by RICO. The gist ofher response is that the defendants "systematically mailed to plaintiff independent billings, invoices, threatening notices and collection notices at the rate of two or three per month, each month,over the years in question" and that "plaintiff was barraged with thousands of pieces of correspondence designed to intimidate andharass plaintiff into complying with defendant's terms..." Plaintiff's Response (AT&T-IS) at 26. Even assuming that plaintiff could adequately allege the elements of mail fraud under 18 U.S.C., Sec.1341, we do not think that she can allege the requisite "pattern" of racketeering activity. Where predicate acts all related to the same transaction, the acts do not support the

continuity aspect of the continuity aspect of the pattern of racketeering activity. As we noted previously, this is essentially an action for breach of contract, and the mailings plaintiff complains of relate to that single,isolated contractual relationship for the lease of the switchboards. As in Elliott, all the alleged predicate acts related to the one attempt to get plaintiff to pay her account or otherwise solve the problems between the contracting parties. there is a single "scheme" and victim in this case, and we conclude that the "continuity" aspect of the pattern requirement has not and cannot be met. See also Analysts Int'l Corp. v. Recycled Paper Products, Inc. No.85 C 8637 (End of P.13) Memorandum Op. at 17-18 N.D. Ill. June 19, 1987) (Grady, J.). Count IX is dismissed with prejudice.

Federal Jurisdiction

We now turn to the questions of whether we should exercise over plaintiff's state law claims (Counts I and IV). Diversity

jurisdiction is not available, as both plaintiff and Bell are citizens of illinois and complete diversity of the parties is lacking under 28 U.S.C., Sec.1332(a). Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267 (1806);Kanzelberger v.Kanzelberger , 782 F.2d 774, 776 (7th Cir. 1985). Ordinarily, diversity jurisdiction may be salvaged by the dismissal of non-diverse parties. Stockman v. LaCroix, 790 F.2d 584, 587 (7th Cir. 1986). Here,however, plaintiff has described Bell as an "indispensible party" to this case (Plaintiff's Response (Bell) at 6, so diversity jurisdiction will not be possible.

The other possibility is pendent jurisdiction. If plaintiff is unable to file an amended section 1981 claim, it is clear that we should not keep the case. "Certainly, ifthe federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well." Gibbs v. United Mine Workers, 383 U.S. 715, 716 (1966).

However, if plaintiff does not state a federal claim, we may exercise pendent jurisdiction if the state and federal claims share a "common nucleus of operative fact." Gibbs, 383 U.S. 725. We reserve judgment on this issue pending any effort by plaintiff to amend her complaint.[6] (End of Page 14)

CONCLUSION

Counts V-XI of the complaint are dismissed for failure to state a claim under Rule 12(b)(6). counts I-IV are dismissed for lack of subject matter jurisdiction under Rule 12(b)(1). Plaintiff is given leave to file an amended complaint alleging race discrimination under 42U.S.C., Sec. 1981 or 1982. We recommend to plaintiff, however, that in deciding whether to file such an amendment she give consideration to the requirements of Rule 11, Federal Rules of Civil Procedure.

Dated: July 31, 1987

ENTER: ss/JOHN F. GRADY

UNITED STATES
DISTRICT JUDGE

FOOTNOTES

1. The attempts to name the appropriate defendants in this case are marked by confusion. The original complaint named "American Telephone and Telegraph Information Systems, a/k/a AT&T, a foreign/New York corporation." Defendants' counsel appeared on behalf of "AT&T Information Systems,Inc." Plaintiff moved to amend her complaint more than a year after it was filed to name a different party, American Telephone & Telegraph Information Systems, Inc., a/k/a AT&T Information Systems, a Delaware Corporation. Counsel has since filed an appearance on behalf of "American Telephone & Telegraph company," and moved for dismissal on behalf of that defendant. This opinion applies to both AT&T Information Systems, Inc." and "American Telephone & Telegraph Company," names that differ slightly from those used by the plaintiff. (END OF PG. 15)

2. Count XI is a general request for injunctive relief restraining defendants from interrupting plaintiff's service and changing her rates. As we have determined that plaintiff has stated no cause of action under federal law and that we have no jurisdiction over her state law claims, we must dismiss this count as well.

3. Bell's Motion for Summary Judgment includes supporting factual material in the form of affidavits of Bell personnel. These statements related primarily to the state claims set forth by plaintiff and Bell's role in the contractual relationship. Because we have no jurisdiction over these state claims and the federal claims fail to state a cause of action, we donot rely on this material in our decision.

Plaintiff claims that AT&T-IS waived its right to file a motion to dismiss under rule 12(b)(6) because AT&T-IS filed an answer and affirmative defense to the complaint.However,

under Rule 12(h)(2), AT&T-IS retains the right to file a Rule 12(b)(6) motion to dismiss if the issues raised in the motion were raised as defenses in the answer. Westland v. Sero of New Haven, Inc., 601 F.Supp. 163, 163 (N.d. Ill. 1985) the "Third Separate Defense" of AT&T-IS is that the "Complaint and Amended complaint fail to state a claim upon which relief may be granted." Answer at 33. AT&T-IS has therefore preserved its right to move for dismissal under Rule 12(b)(6).

4. We recognize that plaintiff isproceeding pro se and we read her complaint liberally in order to determine whether she has stated a claim. Haines v. Kerner, 404 U.S. 519, 520-21 (1971); Fitzmaurice v. Local 712, Int'l Brotherhood of Teamsters, No. 84 C 9197, Memorandum Op. at 4. To this end, we assess the new allegations made in her responsive memoranda throughout this opinion even though they are not technically before us on this motion to dismiss. Rodgers v. Lincoln Towing Service, Inc., 771 F.2d 194, 198 (7th Cir. 1985)

5. Plaintiff's responses to the motions of Bell and AT&T-IS, although paginated differently, feature essentially idential texts. We will refer to both as "Plaintiff's Response" and will identify the particular defendant addressed in parentheses.

6. We emphasize for plaintiff's information that we have given no consideration to the merits ofher state law claims, and add that dismissal for lack of jurisdiction by a federal court gives an Illinois plaintiff one year afterthe date of this opinion to refile the claim in state court even though the statute of limitations may have run out during the pendency of the action in the federal court. Ill. Rev. Stat., ch. 110, Para. 13-217; see Anderson v. Illinois Tool Works, No. 82 C 72-7, Memorandum Op. at 15 (N.D. Ill. Jan. 8, 1987) (Grady, J.)

(End of Page 16)

END OF MEMORANDUM OPINION

APPENDIX 6 (P. 28)

Petitioner's Footnotes

2/

a.Petitioner requests the Court to note that she has never waived her Seventh Amendment right to jury trial with respect to this Civil action, and that Jury Demand was noted and filed on each of Complaint(s) filed (NR-1, 3, and 103). Petitioner believed this case would be heard by Jury rather that Judge on an equivalent "bench trial" with Memorandum Opinion.

b. District Court Order of July 6, 1987 stayed all discovery pending court's rulingon Respondents' Motion to Dismiss and Motion for Summary Judgment.(NR-98) Therefore, no adequate discovery could be taken by Petitioner regarding AT&T (New York) since they were not legally before the court until they filed their Appearance on July 22, 1987 (NR-117-121), after the July 6 Order and after this Appeal was instituted on July 14, 1987 in the Seventh Circuit. Documents deposited with court for purposes of this Appeal on October 5, 1987 was not granted until September23, 1987, after this appeal instituted. Therefore, Memorandum Opinion was not able to base its facts (the Court's version in which Petitioner disagrees with) on documents supplied by Respondent, AT&T (New York).

c. As of the preparation of this Appeal Brief (Petition), Petitioner is presently receiving invoices on leases and on purchases by AT&T and AT&T-IS, and substantial other documents which would ordinarily be used as evidence in a trial, and which have not been presented to the District Court to evaluate impartially in basing its opinions as set forth in the July 31, 1987 Memo. Op. In addition, Petitioner is presently receiving invoices and making payments to BELL for services not received and at issue not covered in the Memo.Op.

Petitioner's Footnotes

d. Petitioner's Complaint(s), motions, and petitioners give several instances in which various representations were made to Petitioner over a six year period, all representations being challenged by Petitioner who relied on the information, even those contradictions. Counts I-IV have allegations of misrepresentations, fraud, deceit and duress, again evidentiary material which could have been brought out more fully if discovery had not been hampered (NR-98), or as questions for a jury.

e. The Memo. Op. claiming that Petitioner's allegations on race as being "conclusionary and unsupported by facts" is without foundation or merit, since these again, are fact questions for a jury. Those few instances in which Petitioner pointed out race as factor were ignored by Court;(a) NR-31-34, Respondents referring Petitioners' clients to their own clientele along racial lines; and (b) NR-87,88,89 wherein the two contracts were cancelled by Respondents upon learning of sales to Petitioner. Again, this is evidence and not required to be pleaded in a notice-type pleading.

The factual information as to Respondents' treatment of minority businesses, particularly answering services and companies requiring switchboard systems similar to Petitioner's, were voluntarily supplied to Petitioner prior to litigation and reinforced by attorneys Sidley & Austin "inadvertently" providing Petitioner with written documentation to confirm the disparity rate schedules, billing and pricing, detailing racial policy and procedures, types of equipment, billing procedure,andracial and ethnic background of its own clients,legal negotiations and other confidentialities -- without investigating Petitioner's racial or ethnic background during phone and mail communications prior to providing the material. Upon being made aware of this, Sidley & Austin successfully stopped discovery. (NR-98)

APPENDIX 7

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT, EASTERN DIVISION

TORRES V. BELL, AT&T and AT&T-IS 86 C 1718

MINUTE ORDER - JUDGE GRADY - AUGUST 3, 1987

MOTION

Court's Motion

ORDER

The Memorandum Opinion of July 31, 1987, plaintiff was given leave to file an amended complaint. That amended complaint shall be filed on or before September 3, 1987.

(Docketed August 4, 1987)

NR-138

3/ **This order is in conflict with District Court's Order in Memo.Op., Footnote 6, granting Petioner 1 year from July 31, 1987 to file Amended Complaint;**

APPENDIX 8

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT, EASTERN DIVISION

TORRES V. BELL, AT&T & AT&T-IS 86-C-1718

MINUTE ORDER JUDGE GRADY, SEPTEMBER 23, 1987

MOTION

Defendant AT&T Information Systems Inc. Motion to Dismiss Cause with Prejudice.

ORDER

The Court hereby dismisses plaintiff's race discrimination claim (Count 10) with prejudice because of plaintiff's statement that she wishes the Court to enter whatever order is necessary to be entered to make the dismissals of the other counts final and appealable.

NR-159

E X H I B I T S

Table of Contents

1. Certificate of Incorporation (Illinois): AMERICAN TELEPHONE & TELEGRAPH CO., INC. (a New York Corporation)
2. Certificate of Incorporation (Illinois): AT&T INFORMATION SYSTEMS, INC. (a Delaware Corporation)
3. Affidavit of Compliance-District Court by Attorney Pamela Hanebutt July 22, 1987

3(a) Affidavit of Compliance-District Court by Attorney Frederic J. Artwick-July 22, 1987

4. Appearances - District Court - July 22, 1987 by Attorneys Hanebutt & Artwick
5. Appearance - Seventh Circuit re 87-8125 by Attorneys Hanebutt and Artwick

5(a) Certificate of Interest re 87-2125 for AT&T INFORMATION SYSTEMS, INC.

6. Respondent AT&T-INFORMATION SYSTEMS, INC., "Answer" to Amended Complaint of April 11, 1986 , Page 2 & 3, No.4
7. Respondents' List of Minority Answering Services, Equipment Status

EXHIBIT 1
(CERTIFICATE OF INCORPORATION)

File Number 0015 788-1

STATE OF ILLINOIS
OFFICE OF THE SECRETARY OF STATE

To all to whom these presents shall come, Greeting:

I, Jim Edgar, Secretary of State of the State of Illinois, do hereby certify that AMERICAN TELEPHONE & TELEGRAPH COMPANY, INCORPORATED in the State of New York and licensed to transact business in this State on January 30, 1899 appears to have complied with all the provisions of the Business Corporation Act of this State relating to the filing of Annual Reports and payment of Franchise Taxes, and is at this time a foreign corporation in good standing and authorized to transact business in the state of Illinois.

IN TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois this 3rd day of june, 1986.

ss/Jim Edgar,Sec.of State

1/ See Section 9 of Brief for numerous other identities represented to Petitioner under EX. 1 and 2.

EXHIBIT 2
(CERTIFICATE OF INCORPORATION)

File Number 5277-567-1

STATE OF ILLINOIS

OFFICE OF THE SECRETARY OF STATE

To all to whom these presents shall come, Greeting:

I, Jim Edgar, Secretary of State of the State of Illinois, do hereby certify that according to the records of this office AT&T Information Systems, Inc., a Delaware Corporationlicensed to transact business in this State on June 25, 1982, has failed to file an annual report and pay franchise taxes for 1986. Therefore, has failed to comply with the provisions of the Business Corporation Act of this State. Therefore the Corporation is not in good standing as of this date***AT&T Information Systems, Inc. adopted the assumed name of AT&T CONSUMER SALES AND SERVICE COMPANY on February 8, 1984 and this name was involuntarily cancelled on November 1, 1985.

In Testimony Whereof,I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois this 3rd day of June, 1986.

(SEAL) ss/Jim Edgar

EXHIBIT 3

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

ROSEE TORRES, Plaintiff

-vs- NO. 86C1718

ILLINOIS BELL TELEPHONE CO., et al, Defendants

AFFIDAVIT OF COMPLIANCE WITH GENERAL RULE 39

PAMELA R. HANEBUTT, Affiant is the attorney of record for AMERICAN TELEPHONE & TELEGRAPH COMPANY and has knowledge of the matters covered by this affidavit and has read General Rule 39.

(Body of Affidavit Not Included- See NR-118)

ss/Pamela Hanebutt

Affiant

Subscribed and sworn to before me this 22nd day of July, A.D., 1987.

ss/Lynn A. Kissel

Notary Public

2/ Note; Original Respondent served April 18, 1987 ;under AMERICAN TELEPHONE & TELEGRAPH INFORMATION SYSTEMS (not Inc.) a/k/a AT&T, a New York Corporation(See EX. 1) per NR-4. This Affidavit filed after Appeal process,without leave of court,under name variation (See Section 9 of Brief)

EXHIBIT 3(a)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

ROSEE TORRES, Plaintiff

-vs-

ILLINOIS BELL TELEPHONE CO., et al, Defendants

AFFIDAVIT OF COMPLIANCE WITH GENERAL RULE 39

FREDERIC J. ARTWICK, Affiant is one of the attorneys of record for AMERICAN TELEPHONE & TELEGRAPH COMPANY and has knowledge of the matters covered by this affidavit and has read General Rule 39.

(Body of Affidavit not Included

See NR-119)

ss/Frederic J. Artwick

Affiant

Subscribed and sworn to before me this 22nd day of July, 1987.

ss/Lynn A/ Kissell

Notary Public

3/ See Petitioner's Footnote 2 on Exhibit 3.

EXHIBIT 4

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT, EASTERN DIVISION

ROSEE TORRES, Plaintiff

-vs- **NO. 86 C 1718**

ILLINOIS BELL TELEPHONE CO., ETAL, Defendants

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR: AMERICAN TELEPHONE & TELEGRAPH COMPANY. (Filed 7/22/87)

SS/Pamela Hanebutt

SS/FREDERIC J. ARTWICK

SIDLEY & AUSTIN
One first Nat'l Plaza

Chicago, Illinois 60603

(312) 853-7000

4/ Appearance filed in conjunction with Affidavit of Compliance for Respondent (EX. 1); See NR-117. Filed July 22, 1987. See this EX.6 for acknowledgement of service (NR-20) April 18, 1986, identifying AT&T (New York) as Respondent.

EXHIBIT 5

APPEARANCE FORM

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Case No. 87-2125

ROSEE TORRES, ETC. , Plaintiff-Appellant

-vs-

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, INC.and AMERICAN TELEPHONE AND AMERICAN TELEPHONE AND TELEGRAPH INFORMATION SYSTEMS, INC., a/k/a AT&T INFORMATION SYSTEMS, a Delaware Corporation

The Clerk will enter appearance as counsel for AT&T Information Systems, Inc.

ss/Frederic J. Artwick

ss/Pamela R. Hanebutt

Docketed July 16, 1987

EXHIBIT 5(a)

CERTIFICATE OF INTEREST

Case no. 87-2125

Short Title: Torres v. Illinois Bell Telephone Co., et al

To enable the judges to determine whether recusal is necessry or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a certificate of interest stating the following information:

1. The full name of every party or amicus the attorney represents in the case: AT&T INFORMATION SYSTEMS, INC.

2) If such party or amicus is a corporation: (i) Its parent corporation, if any: AMERICAN TELEPHONE & TELEGRAPH COMPANY (ii) A list of its stockholders which are publicly held companies owing 10% or more of the stock in the party or amicus: AMERICAN TELEPHONE & TELEGRAPH COMPANY

3) The names of all law firms whose partners or associates have appeared for the party in the district court or are expected to appear for the party in this Court:

This certificate shall be filed with the appearance form or upon the filing of a motion in this court , whichever occurs first. The text of the certificate (i.e., caption omitted) shall also be included in front of the table of contents of the party's main brief.

Attorney's Signature: ss/Frederic J. Artwick

Date: July 22, 1987

5/ Petitioner is unable to determine how the docket sheet indicates filing Certificate of Interest on July 16, 1987 for 87-2125, while signature on Certificate is signed as of July 22, 1987. Petitioner also challeges in Brief AT&T-IS and AT&T-IS (Delaware) standing to Circuit to dismiss AT&T (New York) in 87-2125 and 87-8042 without the latter having filed its own Appearance and Affidavit in its own behalf, although the Seventh Circuit allowed it.

EXHIBIT 6

ANSWER TO PETITIONER'S AMENDED COMPLAINT
(NR-20)

Filed May 23, 1987:

"Defendant AT&T Information Systems, Inc.,("AT&T-IS"), by counsel, responds to the Complaint and Amended Complaint of Rosee Torres insofar as it is directed to an entity known as American Telephone and Telegraph Information Systems as follows:

No. 4: Answer

AT&T-IS denies the allegations of paragraph 4 except as expresly admitted herein. AT&T-IS admits that American Telephone & Telegraph Company ("AT&T") is a New York Corporation which is authorized to do business in Illinois and that AT&T'S registered agent in Illinois at the time the complaint was filed was John s. Van Der Motter, One South Wacker Drive, Chicago, Illinois 60606. Further, answering, AT&T-IS denies that AT&T is properly named as a defendant in this action. AT&T has never owned or leased the switchboards which are the subject of the Complaint and Amended Complaint. AT&T-IS has owned the switchboards since January 1, 1984."

EXHIBIT 7

PARTIAL LIST OF ATTORNEY-CLIENT PRIVILEGED INFORMATION: AT&T ATTORNEY VICTORIA BUSH/AT&T-IS ATTORNEYS SIDLEY & AUSTIN & BELL RE MINORITY TELEPHONE ANSWERING SERVICES RE MINORITY (BUSINESSES) TELEPHONE ANSWERING SERVICES, EQUIPMENT STATUS & PRICE DIFFERENTIATION DOCUMENT: NR-130,NR-162-168,NO. 8, (Discovery Deposited 10/5/87)

BUSH: Verify AT&T INFO & BELL - do not Disclose Levin (Hall) Torres file

1981-82	ANNEX(30) To General	Greenberg/Cordova(Mex) Non-AT&T Eqpmt
1982 2 Yrs	COMMON COURTESY (2) To General	(Blk)
1985	HELLO	(Blk) AT&T Eqpt. Out
1985 20 Yrs	HYDE PARK (2)	(Blk) AT&T Eqpt Out
Present 10 Yrs	HALL'S BUSINESS (1)	(Blk)AT&T Eqpt. Dispute -
Present 5 Yrs	ATTYS HELPER (1) Torres	(Blk/Mex) AT&T Eqpt.-Dispute
Present 16 Yrs	LEGAL SEC.(1) Torres	(Blk/Mex) AT&T Eqpt.-Dispute
Present 5 Yrs	DOCTORS HELPER (1) Torres	(Blk/Mex) AT&T EQPT.-Dispute
Present 10 Yrs	TELEPHONE SEC.(1) Torres	(Blk/Mex) AT&T EQPT.-Dispute
Present 25 Yrs	GARLAND(2) Purchased AT&T	Andriotti (Ital)[W] $2,000
1985	CHICAGO TEMPLE	Contract w/Torres [W] AT&T Eqpt. - Out
1986	221 N.LaSalle	Contract w/Torres[W] AT&T Eqpt - Want to sell